# Standing Board Policies

Operational Policies of The Florida Bar

**July 29, 2016**

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## 100 GENERAL BOARD POLICIES

### 1.10 SEALS, EMBLEMS AND PUBLICITY SYMBOLS OF THE FLORIDA BAR

**(a) Requests for Use.** The name "The Florida Bar" (the bar) and the bar's seals, emblems and symbols are proprietary and may be used only by authorized entities. All requests for use of bar seals, emblems, or symbols must be submitted in writing to the bar's executive director (executive director). The request must include a detailed description or sample of the bar seal, emblem, or symbol that will be used, the nature and purpose of the use, the expected frequency and duration of the use, and the mediums that will be used.

**(b) Authorized Use.** The Florida Bar Board of Governors (the board) or the bar's executive director may authorize use by any other individual, group or organization.

**(c) Unauthorized Use.** No individual, entity or voluntary organization may use the name "The Florida Bar," or expressly or impliedly represent that the entity or organization is officially sanctioned by the bar.

A member may disclose that the member "is a member of The Florida Bar," or that a member is "certified under The Florida Bar Certification Plan," or that an organization is composed "of members of The Florida Bar." A member may not use the name in any other manner unless authorized by the executive director.

The executive director may demand that any individual, group or organization cease any unauthorized use of the bar's name, seals, emblems, or symbols. If the unauthorized use continues after demand, the executive director will bring the matter to the board's attention for appropriate guidance and action to prohibit further unauthorized use.

### 1.20 BOARD MEETINGS

**(a) Times and Places.** The president of The Florida Bar (bar president) will decide the time and place of the board meetings. When selecting meeting sites, the bar president should consider the accessibility and the availability of alternative rooms at less expense than the meeting facility. Social events must not conflict with the business agenda. The board may meet or vote telephonically, by e-mail, or by other electronic means.

**(b) Invocation.** Each board meeting will be opened with an invocation.

**(c) Executive Sessions.** Matters concerning disciplinary actions, Clients' Security Fund (CSF), unlicensed practice of law (UPL), member objections to legislative positions, current or future bar staff, attorney-client consultations between the bar and its lawyers, or appeals under the Florida certification plan will be addressed during executive session. Board members, bar officers and staff designated by the executive director are the only people admitted to executive session, unless one of the following exceptions is applicable:

(1) Individuals receiving a disciplinary sanction or individuals appealing a certification plan ruling may attend the portion of the executive session addressing the

disciplinary action or certification appeal. These individuals may request attendance by their lawyer and the lawyer representing the bar.

(2) Grievance committee members and appointed special bar counsel may attend the portion of the executive session addressing disciplinary matters.

**(d) State, Voluntary or Local Bar Associations or Groups.** The bar president may invite representatives of state, voluntary or local bar associations or groups to attend board meetings and may provide them with pertinent portions of the agenda and relevant backup. Representatives of state, voluntary and local bar associations or groups may not attend executive sessions.

**(e) Roll Call/Recorded Votes.** The presiding officer may order, or 5 members of the board may request, a roll call vote. Any board member, before the adjournment of the meeting, may notify the secretary to record the member's vote in the minutes of the meeting.

## 1.30 MEETINGS OF EXECUTIVE COMMITTEE

**(a) Times and Places.** The bar president will decide the time and place of the committee meetings of the board's executive committee. The executive committee may meet or vote telephonically, by e-mail, or by other electronic means.

**(b) Minutes.** Minutes will be prepared for all executive committee meetings. All minutes and other materials for executive committee meetings and executive session will be distributed to the board members prior to the next regularly scheduled board meeting. The board will confirm the minutes at the next scheduled meeting. In accordance with the Rules Regulating The Florida Bar, all actions taken at the meeting and reflected in the minutes are not final until the board confirms the minutes. Minutes for matters taken up in executive session will be prepared separately, marked confidential, and distributed only to the board.

**(c) Attendance at Executive Committee Meetings.** Any bar member in good standing may attend a meeting of the executive committee except when the executive committee is in executive session. The executive committee may convene in executive session for the same matters as the board. Attendance at executive session is limited to those individuals specified in standing board policy 1.20. A bar member in good standing may request to participate in an in-person or conference call meeting of the executive committee. A requestor's participation in an in-person meeting requires an affirmative 2/3 vote of the members present. Participation in a conference call requires unanimous consent of all members participating on the call. No special arrangements will be made to allow participation in any other manner and the meeting will not be delayed to allow a nonmember to attend.

## 1.40 POLICY FOR APPOINTMENTS AND PROCEDURE FOR ELECTIONS AND NOMINATIONS BY THE BOARD OF GOVERNORS

**(a) Appointments Policy.** It is the bar's policy to ensure that all members, including women and minorities, have equal opportunities to be appointed to committee membership, committee leadership, and other positions.

**(b) Duty of Board.** Board members must be mindful that they hold positions of public trust. All persons should impartially and objectively be considered for nominations, appointments, and elections. Board members must conduct themselves in a manner that reflects credit on themselves and the bar.

**(c) Procedures.** The board must observe the following procedures when electing or nominating a person for any position other than within a bar committee, section or division.

(1) *Notice to Board.* Notice of vacancies will be provided to the board in the board agenda at least 1 meeting prior to the meeting at which the vacancies will be filled. The notice will identify the vacancies and the term of office. A description of the vacant positions will be available in the Master Appointments List.

(2) *Publication to Membership.* Notice of vacancies must also be published in the bar *News* at least 30 days before the board meeting at which the vacancy will be filled. The notice must identify the vacancies to be filled, the term of office, and the deadline for filing applications, and will invite interested persons to submit applications.

(3) *Applications; Filing; Deadline.* No applications will be accepted after the published deadline. If an insufficient pool of qualified applicants applies or a screening committee makes no recommendation, the appointment will be deferred until the following board meeting after republication of the notice of vacancy in the bar *News*.

(4) *Eligible Persons.* All eligible persons who consent to serve and submit completed applications will be considered for nomination or appointment to the following offices:

American Bar Association (ABA) House of Delegates

Commission on Professionalism

Eleventh Circuit Judicial Conference

Florida Board of Bar Examiners

Florida Judicial Nominating Commissions

Florida Judicial Qualifications Commission

**(d) Screening Committees.** A board screening committee will assist in selecting the most qualified persons when making a nomination or appointment to the following positions, and may assist in selecting the most qualified persons for other nominations or appointments:

Commission on Professionalism

Florida Board of Bar Examiners

Florida Judicial Nominating Commissions

Florida Judicial Qualifications Commission

Public Members of the Board of Governors

The appropriate screening committee will consider all applications filed on time.

## 1.41 DELEGATES TO AMERICAN BAR ASSOCIATION HOUSE OF DELEGATES

**(a) Delegates.** The board will select the at-large delegates to the ABA House of Delegates at their last meeting of the fiscal year. Three delegates including the under 35-year-old delegate will be elected in each even-numbered year, and 3 delegates will be elected in each odd-numbered year. The position of delegate will be elected for a 2-year term beginning at the conclusion of the ABA Annual Meeting in the same calendar year. The bar president is automatically designated as 1 of the delegates. The bar president will serve a 2-year term beginning with the ABA Midyear Meeting of the calendar year following election as president-elect. The bar president will serve as a delegate for 1 meeting as bar president-elect, 2 meetings as bar president and 1 meeting as past president. Majority vote of the board will determine the manner of election of the at-large delegates. The bar president may name an alternate for any delegate who is unable to attend any House of Delegates meeting. The Young Lawyers Division board of governors will select the ABA delegate under the age of 35 years, as defined by the ABA, subject to ratification by the bar's board.

**(b) Communication between Delegates and The Florida Bar.** Communication between the bar and its appointed delegates to the ABA is essential if delegates are to properly represent the bar and discharge their duties. The delegates will appoint 1 of their members to regularly report to the board on ABA activities affecting, or of interest to, Florida lawyers. The appointed delegate should periodically consult the board about issues the ABA House of Delegates is, or will be, considering.

**(c) Political and Ideological Positions of The Florida Bar.** The legislative procedures outlined in these standing board policies and the Rules Regulating The Florida Bar and procedures set forth in subdivision (d) apply when the board studies, discusses or takes a position on any political or ideological issues the ABA House of Delegates will be considering.

**(d) Other Positions of The Florida Bar.** The board may instruct the ABA delegates to take a position on issues pending before the ABA House of Delegates. The board determines the bar's position. The bar president will hold a meeting of the delegates and provide a written report to the delegates as soon as possible to inform the delegates of the bar's position and the reasons for the position. If the board does not have time to study or take a position on an issue, the executive committee will determine the bar's position. The delegates will then report the bar's position to the ABA House of Delegates.

## 1.50 MEMBERSHIP IN OTHER ORGANIZATIONS

The bar is authorized to join the following organizations:

**(a)** Inter-American Bar Association.

**(b)** National Conference of Bar Presidents.

**(c)** National Legal Aid and Defender Association.

## 1.60 BOARD ACTION ON PROPOSED RULE OR POLICY AMENDMENTS

**(a) Purpose.** This policy ensures adequate notice to bar members and affected groups. It provides for a necessary substantive, fiscal, planning, and procedural review prior to board action on amendments to the following:

(1) Rules Regulating The Florida Bar;

(2) Standing Board Policies;

(3) Regulations of the Clients' Security Fund;

(4) Florida Bar Procedures for Ruling on Questions of Ethics;

(5) Legislative Policy and Procedures;

(6) Florida Standards for Imposing Lawyer Sanctions;

(7) Code of Judicial Conduct;

(8) Oath of Admission;

(9) Basic Skills Course Requirement Policies;

(10) Continuing Legal Education Requirement Policies;

(11) Standing Policies of the Board of Legal Specialization and Education;

(12) Standing Policies of The Florida Bar Grievance Mediation Program;

(13) Rules of Procedure for Fee Arbitration Proceedings;

(14) Professionalism Expectations;

(15) Guidelines for Professional Conduct;

(16) section bylaws; and

(17) matters designated as significant by the board or the board's executive committee.

**(b) Committee Review.** All proposed amendments must undergo a thorough review by a substantive committee of the board, the rules committee, the budget committee, and the program evaluation committee. Committee reviews must be complete before the substantive review committee presents an amendment to the board for final action.

(1) *Substantive Review.* Any proposed amendment must first be reviewed by a substantive board committee that has responsibility in the area involved. The substantive

committee may refer the proposed amendment to any interested or affected bar committee, section or division for review or recommendation. The substantive committee is responsible for presenting any proposed amendment and committee recommendation to the board. Substantive review of the proposed amendment must occur at least 1 meeting before the meeting at which the board takes final action.

(2) *Procedural Review*. After the substantive review is complete, the rules committee will conduct a procedural review of any proposed amendment to documents listed in subdivision (a) of this policy. The procedural review is limited to a determination of grammatical correctness, appropriate placement of the amendments, compliance with the Supreme Court of Florida Guidelines for Rules Submissions, and consistency of the amendment with all other rules, policies, procedures, or bylaws. The rules committee will report any changes or suggested changes to the substantive committee.

(3) *Fiscal Review*. The bar's Chief Financial Officer (CFO) will review each proposed amendment and determine if there is a potential budget impact as a result of the implementation of the recommendation. If the CFO finds a moderate or significant impact, the budget committee will review the proposed amendment and develop a recommendation to the board.

(4) *Strategic Plan Review*. The program evaluation committee will review the proposed amendment to evaluate its effect, if any, on the bar's strategic plan.

If any review committee or board recommendation affects the substance of the proposed amendment, the board may direct the sponsor or substantive review committee to redraft the amendment. The board may adopt the amendment with or without further amendments of its own.

**(c) Board Action.**

(1) *Conceptual Action.* The board may approve a concept prior to compliance with the terms of this policy.

(2) *Final Action.* The board may take final action on an amendment after compliance with this policy.

**(d) Notice and Publication.** A summary of each proposed amendment must be published in the bar *News* or on the bar website at least 2 weeks before final action is taken by the board and where practicable before first reading of the board. The publication should adequately identify the matter under consideration and the date(s) for presentation to the board. If substantial revisions are made to the amendment the item must be republished and the matter deferred until the next board meeting. Bar members and groups are encouraged to submit comments.

**(e) Rules Regulating The Florida Bar Controlling.** The Rules Regulating The Florida Bar control proceedings under this policy.

## 1.61 GENDER NEUTRAL LANGUAGE REQUIREMENT

**(a) Amendments.** All rules, policies, bylaws, and other matters must be written to avoid reference to gender. Amendment to existing rules, policies, bylaws and other matters must include deletion of existing gender specific language.

**(b) Publications.** All new or revised bar rules, policies, bylaws, publications, and other matters must be written in gender neutral language.

## 1.62 REVIEW OF STANDING BOARD POLICIES

The executive director will periodically review all standing board policies and propose amendment, deletion or adoption of policies as is necessary.

## 1.63 PROCEDURE FOR ADOPTION, AMENDMENT, DELETION AND WAIVER OF STANDING BOARD POLICIES

The Rules Regulating The Florida Bar control proceedings to adopt, amend, delete or waive standing board policies. The rules committee will review all proposed policies, amendments to existing policies and deletion of policies, and recommend action to the board.

## 1.64 PETITIONS TO AMEND RULES REGULATING THE FLORIDA BAR

Petitions to amend the Rules Regulating The Florida Bar will be filed on a biennial basis in October of even-numbered years. Proposed amendments must be submitted to, and approved by, all appropriate committees and the board no later than June 30 immediately preceding the October filing date. A separate filing may be made out of cycle if circumstances require.

## 1.65 APPEARANCES ON DOCUMENTS FILED WITH COURTS

The executive director, or designee, must sign all petitions, responses, briefs and other legal documents filed with the Supreme Court of Florida or documents filed with other courts on behalf of the bar. The bar president or president-elect's name may be added to a filing.

The chair or designated representative of the bar unit that sponsored or prepared the document may be added as additional counsel.

Pleadings in disciplinary and UPL cases may be signed by bar counsel unless otherwise required by the Rules Regulating The Florida Bar or these policies.

## 1.70 PRESENTATION OF INSCRIBED TEXTS

The bar will present an inscribed text appropriate to the occasion to newly appointed state appellate judges and federal judges in Florida at their investiture ceremonies as a remembrance of the occasion and a reminder of the solemnity of their new judicial responsibilities. The board encourages local bar associations to participate in investiture ceremonies and, if possible, present an inscribed text appropriate to the occasion to county and circuit judges.

## 1.80 GENERAL RECUSAL POLICY

Board members may not participate in a board matter and must recuse themselves if the members' participation in the matter may bring into question the integrity of board proceedings. A board member must disclose any fact or circumstances the member is aware of that may bring into question bias or prejudice of any board member when considering any bar matter at or before the beginning of discussion on the matter, regardless of the board member's intent to recuse. The person presiding over proceedings in which recusal is an issue may order the recusal of any board member involved in the matter with the concurrence of a majority of the members present. A recused board member may not discuss the matter at issue with any board member or group of board members and may not debate or vote on the matter. A recused member may not be present if the matter is being discussed, debated or voted on in executive session. A board member should never be recused merely to avoid participation in a matter. This recusal policy does not create or defeat any substantive rights of individuals associated with any board action.

## 1.90 DIVERSITY AND INCLUSION

The bar is fully committed to the enhancement of diversity and inclusion within the bar, the legal profession, legal education, and in the justice system, and affirms its commitment toward a diverse and inclusive environment with equal access and equal opportunity for all.

## 200 BAR OFFICERS AND BOARD MEMBERS

### 2.10 LIAISON TO BAR GROUPS

The bar president will assign, at the bar president's discretion, board liaison members to bar standing committees, special committees, sections, and divisions to attend meetings and receive copies of reports. Board liaison members are non-voting ex-officio members of the committees and other bar groups to which they are assigned.

### 2.20 ELECTION OF PRESIDENT-ELECT

**(a) Intent.** These policies and procedures are established to keep the process of campaigning for nomination and election to the office of president-elect open to as many members as practicable without excessive campaign activity or undue interference with the exercise of free speech.

**(b) Agreement to Participate and Participating Candidates.** Candidates who agree in writing to abide by the campaign limitations set forth in this policy (participating candidates) will receive incentives listed in this policy.

**(c) Eligibility for Incentives.** The bar will provide incentives to participating candidates. In order to receive the incentives, candidates for the office of president-elect:

(1) must not have sent an unsolicited mass communication since the conclusion of the last election for president-elect, and

(2) must agree in writing, prior to the close of the nomination period, to comply with the campaign limitations.

If any candidate has not agreed to the campaign limitations, those candidates who have previously agreed will have 5 days to revoke the agreement and forgo the incentives.

**(d) Incentives.** A participating candidate is entitled to campaign aid from the bar, free of charge or at a special rate. Other candidates may obtain these benefits at their own expense at the bar's standard commercial rates:

(1) *Membership Data.*

(A) Access. The bar will provide a participating candidate basic biographical data of members entitled to vote in the election. The information will be provided in the manner the bar maintains the data or is able to generate the data without modification of its software programs. The participating candidate may obtain 1 free set of data during each period. If the participating candidate obtains more than 1 set of data per period, the candidate will incur the bar's standard commercial rates. The periods are:

(i) prior to the nomination period;

(ii) after the nomination period begins and until the end of the initial election; and

(iii) during any runoff election.

(B) Use. Participating candidates must agree to abide by restrictions on the use of the membership data in a separate contract provided by the bar. A participating candidate must not authorize the membership data provided by the bar to be:

(i) duplicated for use by anyone other than the participating candidate's own campaign; or

(ii) provided to any person, association, organization, or company other than the participating candidate's own campaign staff or a commercial service for purposes of transmitting campaign material to members of the bar.

(2) *Bar News.*

(A) Announcement. The January 1 issue of the bar *News* will explain the provisions and purpose of this rule and identify candidates who have agreed to abide by the campaign limitations.

(B) Platform Statement. A participating candidate will be given the option to include, at no cost to the candidate, a platform statement (not to exceed ½ page) in the February 1 issue of the bar *News*.

(C) Advertisements. A participating candidate will be given the option to purchase, at a special rate reflecting the actual cost to the bar, up to 1 full page in any or all of the following issues of the bar *News*: January 1, January 15, February 1, February 15, and March 1.

(D) Inserts. A participating candidate may purchase, at a special rate reflecting the actual cost to the bar, a single 8½ inch by 11 inch, 2-sided insert for insertion in any 2 of the following issues of the bar *News*: January 1, January 15, February 1, February 15, and March 1.

(3) *Bar Winter Meeting Brochure.* The bar will offer to print, at its own expense, a campaign brochure for each participating candidate for distribution at the bar's information desk at the Winter Meeting. The brochure will be printed from camera-ready layouts provided by the candidate in accordance with specifications provided by the bar.

(4) *Bar Website.*

(A) Platform Statement and Questions and Answers. Each participating candidate's platform statement, any questions and answers published in the bar *News*, and an appropriate link to any separate website of the participating candidate will be published on the bar's website, free of charge to the participating candidate.

(B) Advertisements. Advertising space on the bar's website will be offered to participating candidates at actual cost and consistent with general bar policies.

(5) *Information with Ballots.* A participating candidate may include statements or biographical information on both sides of a single 8-1/2 by 11 inch page, in any type size. This statement or information will be included in any paper ballot at the bar's expense. Equivalent information will be included on the same terms, consistent with the medium used in any other ballot format. Statements must not contain a reference to another candidate or another candidate's views.

**(e) Campaign Limitations.**

(1) *Unsolicited Mass Communications.*

(A) A participating candidate may not send more than 1 unsolicited mass communication during each of the following periods:

(i) prior to the beginning of the nomination period;

(ii) after the nomination period begins and until the end of the initial election; and

(iii) during any runoff election.

(B) Communications are considered unsolicited mass communications if they:

(i) are sent from an individual by United States mail, commercial delivery, electronic mail, facsimile transmission, or telephone;

(ii) relate to the election for president-elect or any issue intended by the individual to be raised in their campaign for president-elect;

(iii) are sent, at once or cumulatively, to more than 1 percent of the members of the bar in good standing, not including anyone who is part of the individual's campaign organization, who has signed the individual's nominating petition, who has given an individual an endorsement for office, or are personally known to the individual.

(2) *Advertisements.* A participating candidate may not advertise regarding the campaign for president-elect or any issue intended to be raised in the campaign in any public media other than the bar website and the bar *News*, including, but not limited to, financial newspapers, voluntary bar publications, the bar *Journal*, and bar section publications.

(3) *Phone Banks.* A participating candidate may not use telephone bank solicitations unless the candidate, or volunteers in support of the candidate, initiates the calls.

**(f) Other Campaign Assistance.** The bar will offer its services in assisting and advising all interested individuals on applicable policies and other potentially helpful information.

**(g) Conduct.** All references to conduct by an individual or candidate include conduct by any other person acting on behalf of the individual or candidate.

## 2.21 ELECTIONS COMMITTEE AND BOARD SANCTIONS

**(a) General.** An elections committee will monitor the conduct of aspirants and candidates for election to the office of president-elect of the bar, member of the bar's board of governors, and member of the bar's Young Lawyers Division board of governors. The committee will consist of 3-5 members of the bar in good standing, at least 1 of whom had a contested election to the office of president-elect. The members of the committee will be appointed by the bar president-elect to serve July 1 – June 30 and will serve 1-year terms.

**(b) Committee Authority.** The committee is authorized to provide interpretation of bar elections policies, identify violations of campaign conduct requirements, investigate complaints and recommend sanctions to the board. Members of the committee must remain neutral and not support a particular candidate for any office under the committee's authority.

If the elections committee determines that an aspirant or a candidate has violated bar rules or policies related to the conduct of campaigns for the bar's board of governors, the office of president-elect of the bar, the bar's Young Lawyers Division board of governors, or this policy, it will recommend that the board impose sanctions that may include any 1 or a combination of:

(1) publishing, at the individual's expense, of an apology to the members of the bar for any violation of the rules or this policy;

(2) withholding all or a portion of bar aid;

(3) restricting the type of campaign activities the individual may engage in or the length of time the individual may campaign;

(4) releasing the campaign opponents of the sanctioned individual from any restrictions on the type of campaign activities they may engage in or the length of time they may campaign; or

(5) taking appropriate disciplinary action for any violation of the rules or contractual agreements.

**(c) Board Action on Sanctions.** The board, by a majority vote of those members present and voting, may adopt, reject or modify the sanctions recommended by the elections committee. If the board modifies the sanctions imposed, the board is limited to the sanctions listed in subdivision (b), above.

## 2.22 ELECTIONS - COUNT OF BALLOTS

Ballots for all elected bar officers will be counted even if a voting member did not vote for a candidate in all vacant offices.

## 2.30 BOUND VOLUMES OF *JOURNAL* AND *NEWS* FOR RETIRING PRESIDENT

All issues of the bar *Journal* and *News* that were published during a bar president's term will be bound, inscribed and presented to the outgoing president after the president's term.

## 2.40 CERTIFICATES OF BOARD MEMBERSHIP

A certificate or plaque evidencing the board member's period of service will be presented to each member on retirement from the board.

## 300 GENERAL ADMINISTRATIVE POLICIES

## 3.10 PROPOSED BUDGET; RESERVE POLICIES

**(a) Form of Proposed Budget.** The budget committee will provide a summary of the proposed budget and the current budget at least 15 days before approval is requested from the board. To permit a convenient comparison, the summary will also include the current year-to-date results and the previous 2 years' final results as of the date of preparation. The document should include any underlying assumptions and notes of interest such as reserve allowances and significant additions or deletions from the previous budget.

**(b) Budgetary Authority.** Programs approved by the board will be included in the proposed budget. Programs will be funded based on the priorities established by the board. When sufficient funds are not available to fund every approved program in full, the budget committee will make recommendations to the board as part of the proposed budget preparation and approval process on the level of funding for each program, which programs should or should not be funded, and whether a membership fees increase is necessary to fund approved programs. The budget committee will report to the board instances where funding for a program is being recommended at an amount other than originally requested.

**(c) Reserve Policies.**

(1) *Building and Equipment Fund.* Building and equipment reserve funds will be accumulated and held at levels required to support estimated current and future capital outlay needs. The funds may be used for equipment purchases or facility expansion and upgrades. Additions to and uses of the reserves will be displayed and monitored for budgetary control purposes.

The funding for this reserve is the annual depreciation amount based on the cost and useful lives of the related assets. The annual budget will include a capital outlay plan that indicates the use of these funds for either major equipment purchases or facility expansion and upgrade. Approved charges against equipment reserve must meet the minimum capitalization level for fixed assets, which are identified in administrative accounting procedures and updated periodically by the CFO.

Expenditures for building charges against the reserve must either exceed a threshold of $5,000.00 for maintenance items or be for capital outlay.

(2) *Clients' Security Fund.* The Clients' Security Fund (CSF) will be funded each fiscal year in an amount up to $25.00 per member in good standing, up to $25.00 per inactive member as provided in rule 1-7.3(d) and up to $25.00 per motion to appear *pro hac vice* or verified statement in arbitration filed pursuant to rules 1-3.10 and 1-3.11. The number of active and inactive members will be determined on October 1st of the preceding fiscal year. Payouts in each fiscal year may not exceed that year's funding plus any additional allocation approved by the board.

(3) *Board Designated Reserve Funds.* The board may designate certain net revenue streams or accumulated net earnings to be used for specific programs or needs. This may

include items such as the Young Lawyers Division, annual operating and new programs funds, software purchases and rules challenges. Additions and uses of these funds will be tracked and reported. The budget committee will review the designated fund balances and recommend adjustments as needed to the board. The designated fund balances will be identified in the financial statements presented to the board.

**(d) Undesignated Cash Reserve Policies.** The undesignated fund balance (cash reserves) is the remaining amount available to spend after all other board restrictions as allowed in subdivision (c)(3) above (e.g. CSF, Certification Fund, Building/Equipment and Software Funds, Young Lawyers Division, and the Haas Fund) and designations required by outside parties such as grantors have been deducted from the accumulated net income (fund balance) recorded in the bar's balance sheet.

The undesignated general fund balance should be no less than 4 months (33%) expenditures, and the maximum should not exceed 8 months (67%) of the approved current year general fund expense budget to ensure that the bar has sufficient funds available to perform the required mission assigned by the Supreme Court of Florida and to mitigate against current and future risks.

**(e) Review of Funding Level.** The budget committee will review a status report related to the current level of funds with regard to the projected short term and long term financial demands at each meeting. If the committee finds that the funds are either above or below the required amounts, the committee chair will report that information to the board.

## 3.11 BUDGET PROJECTIONS

**(a) Five-Year Projections; Existing Programs.** Staff will prepare, as part of the annual proposed budget, a 5-year projection of all bar programs, activities, sections, and committees based on full absorption to include all direct and indirect costs and receipts, estimated membership increase and inflation.

**(b) Three-Year Projections; New Programs and Extensions of Existing Programs.** A 3-year projection of receipts and expenditures will be submitted with proposals for new programs, or the expansion of existing programs. The projection will include all direct and indirect costs, be reviewed by the CFO and be submitted to the program evaluation committee.

**(c) Funding and Program Requests; Relationship to Strategic Plan.** All funding and program requests will state how and where the request fits into the bar's strategic plan.

## 3.12 FINANCES

**(a) Budget Amendments.** The executive director may transfer budgeted amounts between line items in bar departments, divisions, or programs so long as the total of the operating budget is not changed.

**(b) Purchase Order System.** All bar officers, committees, sections and divisions who purchase items in the bar's name must use the bar's purchase order system when the item is over an

amount set by the executive director. The executive director may approve exceptions in isolated cases.

**(c) Staff Travel.** The executive director will determine which bar staff attend meetings. Bar staff must complete a travel authorization request, with an estimate of travel costs, prior to travel for approval by the executive director or the employee's division director. The bar will reimburse bar staff approved for travel for reasonable transportation and lodging costs plus actual out-of-pocket meal expenses up to a maximum rate set by the budget committee and included in the annual budget instructions. Travel expenses for companions of bar staff or bar members will not be reimbursed unless approved by the board.

**(d) Executive Director Travel.** The executive director does not need prior board approval for expenditures from the travel account.

**(e) Public Members' Travel.** The bar will reimburse the nonlawyer members of the board and standing committees for reasonable travel expenses (including economy class air fare, rental car, ground transportation, tolls and parking) and meals associated with attendance at meetings of the board or standing committee consistent with limits governing bar staff travel as set by the budget committee each fiscal year, except that working lunches will be reimbursed at cost. Nonlawyer board and standing committee members must submit requests for expense reimbursements and receipts to the appropriate bar staff liaison within 30 days of travel.

**(f) Presidential Expenses.** The bar president, president-elect, and president-elect-designate are each entitled to an allowance for expenses incurred while carrying out their official duties at the discretion of each officer. At the end of the bar's fiscal year, the bar president, president-elect and president-elect designate along with the president and president-elect of the bar's Young Lawyers Division should submit to the budget committee a report of the expenses for their terms.

## 3.13 AUDIT COMMITTEE

The audit committee is composed of at least 5 members, each with a 2-year term. The terms will be staggered. The responsibilities of the audit committee are to:

**(a)** recommend selection of an independent auditor to the board by April 1 of each year;

**(b)** meet with the auditor independently of staff prior to audit to establish audit guidelines;

**(c)** review the audit report, comments, and staff responses;

**(d)** meet independently with the auditor after the audit is complete and report to the board;

**(e)** review the bar's fiscal and accounting policies and make recommendations to the staff and the board.

## 3.20 INSURANCE FOR BOARD MEMBERS, BAR OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND BAR STAFF

**(a) Coverage.** Appropriate insurance coverage will be provided for board members, bar officers, grievance committee members, UPL committee members, CSF committee members, and bar staff as budgeted and authorized by the budget.

**(b) Indemnification.** The bar will indemnify, to the extent not covered by insurance, any board member, bar officer, grievance committee member, UPL committee member, CSF committee member or bar staff who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding. This applies to all types of cases whether civil, criminal, administrative or investigative (other than an action by the bar). This is limited to those actions based on the person's status as a board member, bar officer, grievance committee member, UPL committee member, CSF committee member or bar staff. This indemnification will cover expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit, proceeding or appeal. The person must have acted in good faith, in the best interests of the bar and with reasonable belief that the conduct was lawful. The bar will not presume that the person acted in bad faith, in opposition to the best interest of the bar, or without reasonable belief that the conduct was lawful solely because the proceeding terminated in a manner unfavorably to the person.

## 3.30 GUIDELINES FOR BAR ENDORSEMENT/PARTICIPATION PROGRAM

**(a) Requests for Endorsement.**

(1) All requests for endorsement will be referred to the member benefits committee for review and recommendation to the board for approval.

(2) The foremost factor considered when reviewing requests for endorsement is whether the endorsement will result in a significant and unique benefit to the members of the bar. "Benefit" may include discounts, better availability of products or services and related matters that are not otherwise available to members of the bar. Endorsement should not be granted if it impairs or appears to impair the integrity or reputation of the bar.

(3) Endorsements by the bar should not be granted in the area of services or service-related products that are universal in nature.

(4) Prior to granting an endorsement, a reasonable survey of market conditions should be conducted to determine if the benefits offered are significant, unique, and otherwise unavailable to members of the bar.

**(b) Endorsement.**

(1) An endorsement should be on an exclusive basis.

(2) The maximum term of an endorsement is 5 years. The board reserves the right to terminate an endorsement at any time and for any reason.

(3) An endorsement must be by written contract and include:

(A) the specific terms and details of the benefit to be offered;

(B) an agreement to indemnify the bar, its board members, committees, officers, staff and members, for any liability resulting from the endorsed service and agreeing to hold the bar harmless; and

(C) a statement of the rights and responsibilities of each party under the endorsement agreement, including an administrative fee to be paid to the bar for the endorsement.

**(c) Participation in Member Benefits Program.**

(1) All requests for participation in a member benefits program will be submitted to the member benefits committee for review and recommendation to the board.

(2) The foremost factor considered on review of a request for participation is the nature of the benefit to the members of the bar. The benefit may include discounts or better availability of products or services and should be liberally construed. Participation will not be granted if it impairs or appears to impair the integrity or reputation of the bar.

(3) Participation should be granted only in the area of services or service related products that are universal in nature.

(4) Participation should be approved only on a nonexclusive basis.

(5) The benefit of participation should be evaluated for purpose of determining that participation is more than a mere group discount availability.

**(d) Agreement for Participation.** An agreement to participate in a member benefits program must be by written contract and include:

(1) a nonexclusive agreement for participation;

(2) a maximum term of participation for 1 year; and

(3) a provision for disclaimer of bar responsibility for the service or service related products and that the participation does not constitute a bar endorsement.

**(e) Publication of Participants in Member Benefits Programs.** The bar will publish a list of all approved participants in member benefits programs on the bar's website or another appropriate location.

## 3.40 FLORIDA BAR STAFF LEAVE POLICIES

The bar staff leave policy is at the discretion of the executive director.

## 3.50 FLORIDA BAR STAFF SEEKING PUBLIC OFFICE

**(a) Resignation of Employment Required.** Bar staff have a unique relationship with the legal profession, the judiciary and legislative bodies, and may not seek election to public office during their employment at the bar.

**(b) Time of Resignation.** A bar staff member who intends to seek public office must resign at least 2 weeks before the earliest of the following events:

(1) the qualifying date;

(2) the date on which the staff member publicly announces entry into the race; or

(3) the date the staff member commences an active campaign, including any type of fundraising efforts.

**(c) Rehiring Former Bar Staff.** A former bar staff member who has been unsuccessful in seeking public office may be re-employed by the bar provided:

(1) the former staff member qualifies for an existing vacancy;

(2) the former staff member's prior employment with the bar was satisfactory; and

(3) the former staff member's re-employment by the bar will not have an adverse effect on the bar's work and goals.

## 400 MEMBERSHIP FEES

### 4.10 INVESTIGATION OF BAR PETITIONS

The board may order an investigation into the activities of a member of the bar who seeks reinstatement pursuant to the Rules Regulating The Florida Bar.

### 4.20 FEES PAYMENTS AND REFUND OF FEES

**(a) Refund Due to Death.** A bar member's estate or former employer may be entitled to receive a pro-rated refund of membership fees for the fiscal year in which the member dies. The bar will issue a pro-rated refund only if the bar member's estate or former employer requests the refund within 60 days after the death of the bar member and the fees were paid on time.

**(b) Fees Statement.** All bar members must pay membership fees regardless of whether they receive a membership fees statement.

### 4.30 DUES FOR FACULTY AFFILIATE MEMBERS OF THE FLORIDA BAR

Law faculty affiliate members of the bar are required to pay annual dues in an amount set by the board on or before July 1 of each year. Law faculty affiliate members of the bar may join bar sections and divisions provided they pay the same section and division dues required for other bar members.

## 500 BAR COMMITTEES, SECTIONS AND DIVISIONS

### 5.10 STANDING COMMITTEES

The bar will maintain a current list of its standing committees and will post the list on its website.

### 5.20 COMMITTEE STRUCTURE, MEMBERSHIP AND TERMS

**(a) Committee Groups.** Bar committees are divided into 6 groups: substantive law committees, public service committees, bar services committees, certification committees, court rules committees, and special committees.

**(b) Structure.** Each committee will have a chair, a vice chair, and a sufficient number of members to meet the needs of the committee. The bar president may establish an executive committee for any committee. The executive committee is authorized to act on all matters that must be acted on before the next meeting of the committee.

**(c) Membership.** The bar president, on consultation with the committee chair, may remove and replace a committee member at any time if the member is no longer a bar member in good standing or no longer demonstrates an interest in the committee. This policy will be published in a manner accessible to all present or prospective committee members.

**(d) Terms.** A committee member may not serve on the same committee more than 6 years continuously. A member may not be reappointed to that committee for at least 3 years after the 6-year term has ended. This provision does not apply to substantive law committee memberships as defined in these policies.

### 5.21 COMMITTEE CHAIRS' AND MEMBERS' EXPENSES

The bar will not reimburse committee members and chairs for meals, travel, entertainment or other expenses except as provided for regarding nonlawyer committee members and chairs elsewhere in these policies. The bar will not pay for expenses in connection with committee meetings, except as provided in the approved budget.

### 5.22 COMMITTEE REPORTS

The chair of each committee will submit committee reports as follows:

**(a)** a status report within 10 days following each committee meeting to the bar president, president-elect and executive director;

**(b)** a committee attendance and evaluation form by February 1st to the bar president-elect and executive director; and

**(c)** an annual report for publication in the June *Journal*.

## 5.30 SUBSTANTIVE LAW COMMITTEES

**(a) Scope; Function; Rights.** The scope and function of substantive law committees are to study recent developments in an area of practice of the law and to keep bar members informed of significant developments in this practice area. Substantive law committees may publish articles, sponsor continuing legal education (CLE) programs, and participate in other Florida bar programs to be an effective conduit of information to the bar and the citizenry. Substantive law committees do not have all the rights and privileges of sections, but may seek section status by complying with applicable policy.

**(b) Creation of Substantive Law Committees.** An organized group of at least 25 bar members in good standing may request that the board create a new substantive law committee. The proposed substantive law committee must submit a proposed statement of activities and a budget for review by the program evaluation and budget committees. The proposal should include a description of any conflicts and overlaps with existing sections or committees. After approval of the interim substantive law committee by the board, the committee must reach a roster of at least 50 members who have attended at least 1 committee meeting or actively participated in the committee's activities during the year. The new roster must be submitted to the program evaluation committee, budget committee and board for approval. Once the minimum membership level has been achieved, substantive law committee status may be granted.

**(c) Minimum Membership Requirement.** Substantive law committees must maintain an active membership of at least 50 members. The program evaluation committee will review committees that fail to meet a membership threshold for 2 of 3 consecutive years. The program evaluation committee may make a recommendation to sunset the committee or merge the committee into an existing bar section or committee. A copy of the annual committee evaluation forms for each affected substantive law committee, used by the bar president-elect for appointment purposes, will be sent to the program evaluation committee.

**(d) CLE Activities of Committees.** Substantive law committees may conduct or sponsor CLE courses in compliance with applicable policy.

**(e) Legislative Activities of Committees.** Substantive law committees may advance legislative positions in compliance with applicable policy.

**(f) Committee Newsletters and Other Publications.** Newsletters, which include pertinent items of interest dealing with substantive law, may be produced and disseminated to the members of substantive law committees in print or electronic forms. Costs associated with newsletters should be budgeted according to subdivision (g) of this policy. Substantive law committees are encouraged to work with the bar *Journal* and *News* editorial board to reach a broader audience. Committees should include articles of interest related to a specific area of substantive law in an issue of the *Journal* each year.

**(g) Committee Budgets.** Substantive law committee budgets will be submitted annually to the budget committee for its review. Items in the budget may include postage, printing, supplies, costs associated with any newsletters, and costs due to free programs offered at meetings approved in the budget.

**(h) Committee Dues Prohibited.** A substantive law committee may not collect dues from its members. The bar may provide a reasonable budget from its general fund to support the activities of substantive law committees.

**(i) Review of Committee Programs.** The program evaluation committee will periodically review the activities and programs of each substantive law committee. Each year the program evaluation committee will review approximately 1/3 of the committees, but no more than 3 committees, in any year. The program evaluation committee will develop and provide forms and guidelines to each substantive law committee chair. The chair must submit the forms to the program evaluation committee for review. This form should include, at a minimum:

(1) information on the number of members who actively participate in committee matters and the basis for determining the level of activity;

(2) a description of each CLE program produced and the attendance at each program;

(3) budgetary information on revenues and expenses;

(4) information describing newsletters and other publications;

(5) a listing of other major accomplishments of the committee; and

(6) other information deemed necessary for the program evaluation committee's review.

## 5.40 SPECIAL COMMITTEES OR COMMISSIONS

In addition to the bar's standing committees, the bar president may establish special committees or commissions with the board's advice and consent.

## 5.50 SECTIONS OF THE FLORIDA BAR

The bar will maintain a current list of its sections and will post the list on its website. A section is a voluntary group of bar members organized to provide information and education in a specific area of law and to allow bar members to meet other practitioners in that specific area.

## 5.51 SECTION MEMBERSHIP POLICIES

**(a) Affiliate Membership of Sections.** Any bar section may provide for affiliate membership in the section's bylaws subject to approval by the board. The bylaw provisions relating to affiliate membership must include:

(1) affiliate membership is of the particular section only;

(2) affiliate members may not vote;

(3) affiliate members may not hold any section office;

(4) affiliate members must pay dues as set by the section;

(5) affiliate members must be students currently enrolled in an accredited school of law, members of stated professions, inactive bar members, or persons who hold positions directly related to the section's area of law;

(6) the section must reimburse the bar for expenses incurred by the bar in administering the affiliate memberships; and

(7) affiliate members will comprise no more than 1/3 of the total section membership.

**(b) Section and Division Membership for New Bar Members.** New bar members may elect to join up to 3 sections, or 2 sections plus the bar's Out-of-State Division, without paying section dues for the first fiscal year following admission to the bar.

## 5.52 SECTION OFFICERS AND EXECUTIVE COUNCIL MEMBERSHIP

Sections are represented by groups or persons selected by the section membership in a manner that ensures the opportunity for democratic election. In order to comply with this policy a section may elect either of the following methods:

**(a) Election of Executive Council.** At least 1/2 of each section's executive council will be elected by the membership of the section. The numerical computation used to determine compliance with this requirement will not include ex-officio members or those members who serve on the executive council by virtue of their position as chair or vice chair of a committee of the section.

**(b) Election of Officers.** All officers of each section will be elected by the membership of the section.

(1) If a section's bylaws provide for circuit representatives on the executive council, the circuit representatives will be elected by the membership of the section.

(2) If a section's bylaws provide for appointment of members to the executive council, the appointments will not be effective unless approved by a majority of the elected officers.

(3) If a section's bylaws provide for executive council membership by virtue of appointment to a section position (such as, but not limited to, committee or subcommittee chair), those persons will not assume executive council membership unless a majority of the elected officers approve the appointments.

## 5.53 SECTION BUDGET POLICIES

**(a) Section Budget Preparation.** The section's designated officers or budget committee will prepare and submit a proposed budget for the forthcoming fiscal year to the executive council for approval. The bar's budget committee will designate a date that the proposed budget submission is due to the bar.

**(b) Approval of Budget.** The bar's budget committee will consider budgets proposed by the sections in the same manner as all other items submitted to the committee and recommend a proposed budget to the board for approval. All notice, hearing and objection provisions of the Rules Regulating The Florida Bar regarding budgets remain in effect.

**(c) Publication of Budget.** The section's proposed annual budget, including full disclosure of the section's policy regarding reimbursement of officer or member expenses, will be distributed to all section members after recommendation of the budget committee and approval by the board and the Supreme Court of Florida.

**(d) Budget Amendments.** The section executive council may approve budget amendments totaling no more than 10% of its total disbursement budget or 30% of the budgeted ending fund balance in the original approved budget, whichever is greater. The executive council may delegate its budgetary authority to its executive committee only if actions of the executive committee are ratified by the full council. Once the maximum budget amendment level has been reached all further budget amendments for the fiscal year must be approved by the board.

**(e) Legislative Budget.** A section may use section membership dues and other revenue for legislative activities but may not budget or expend for legislative activities any amount that will result in a negative projected year-end fund balance.

**(f) Travel.**

(1) *Budgeting of Out-of-State Travel for Staff.* The section annual budget will include the purpose, location, and duration of the travel for all out-of-state trips that are expected to require staff support.

(2) *Approval of Out-of-State Staff Travel.* All out-of-state staff travel requested by the section must be approved by the executive director at least 30 days in advance of the travel.

(3) *Reimbursement of Member Out-of-State Travel.* All reimbursement of member out-of-state travel and meeting-related travel must be identified as separate line items in the budget.

**(g) Gratuities.** No gratuities will be budgeted for or paid to bar staff.

**(h) Publication of Final Budget after Amendments and Actual Operations.** The section will publish a comparison of the final budget after all amendments and actual results of operations within a reasonable period after the end of the fiscal year.

**(i) Excess CLE Speaker Expense.** Sections may elect to pay speaker expenses in excess of the CLE policy provided these expenses are clearly identified in the published section budget. The budget must show the maximum amount payable in excess of the CLE reimbursement limit or a statement that there is no limit, and the total amount budgeted by the section for payment.

**(j) Conflicting Policies.** This is the controlling policy if a conflict arises with another existing bar or section policy.

## 5.54 SECTION DISBURSEMENT POLICIES

**(a) Disbursement Authorization.** Expenditures may be made only as authorized by the approved budget.

**(b) General Purchasing and Contracting Policies.** All standing bar policies regarding purchasing, contracting, employment for personal services and documentation of expenditures must be observed. Policies are not reproduced here in detail. Bar staff will guide a section through compliance.

Purchase orders are required for all purchases of goods and services over an amount established by the executive director. Documentation of bids secured and evidence of receipt are required. Original invoices or receipts are required for payment of expenses except when the section member has made payment to the vendor. In those cases a copy of the invoice or bill is acceptable. Invoices or receipts are not required for normal miscellaneous office expenses such as copying, postage and telephone charges.

Personal services may not be paid without a written contract approved by the executive director or designee.

**(c) Disbursement Approval.** The officer designated by the section must approve in writing the payment of reimbursable expenses in excess of the amount approved by the section as part of the required disclosure outlined in standing board policy 5.54(c) for officer and member expense reimbursements. These requests and appropriate documentation must be sent to the designated officer for approval and then forwarded to the program administrator for payment.

The designated officer has the discretion to accept a signed, written statement of explanation from the reporting individual if the original invoices, receipts, or other documentation are not available. The requestor must state the nature and amount of the expenditures and that the documentation is not available.

The designated officer may not approve that officer's own reimbursement request and another section officer must approve the reimbursement request prior to payment.

**(d) Entertainment Expenses.** Sections should not expend section funds for entertainment purposes. However, minor amounts may be expended for refreshments at functions that invite attendance of the general section membership. Fees collected specifically for entertainment purposes at a section function may be expended for those purposes.

**(e) Section Reimbursement Policy.** Sections may separately budget a fixed amount to be paid annually to section officers for reimbursement of all expenses incurred as opposed to reimbursing expenses on an item-by-item basis. Except for the expense allowance provided for section officers, all reimbursement of expenses must be in accordance with, or be on a more restrictive basis as determined by individual sections, the following:

(1) *Telephone Charges.* All conference call charges must identify the parties called and the amount and purpose of the call. Telephone calls up to $50.00 per month may be

reimbursed without itemization. If charges exceed that amount, all charges must be identified by the following:

(A) party called;

(B) telephone number called; and

(C) purpose of the call.

(2) *Copy Costs.* Office copy costs must not exceed 10¢ per copy and must be itemized by number of copies and purpose. "Miscellaneous" or "general" are appropriate descriptions for small numbers of copies.

(3) *Postage.* The reimbursee must itemize contents, recipients, and costs for large mailings. Mailings should be done by section staff at the bar headquarters when possible.

(4) *Printing.* All printing must be done at bar headquarters unless, for the benefit of the section and the bar, circumstances warrant otherwise.

(5) *Travel Expenses.* Travel expense reimbursement is essentially the same as for bar staff.

(A) Air fare in all instances must be economy class.

(B) The section establishes the mileage reimbursement rate up to the maximum the IRS allows without the reporting requirement.

(C) When taxis or other ground transportation are not practicable, a rental car may be used. Reasonable rental car rates will be reimbursed.

(D) The method of travel should be the most economical, considering both time and travel costs.

(E) Actual, reasonable meal expenses will be reimbursed on approval by an authorized section officer. An individual will not be reimbursed for a group meal function paid for by the section.

(F) Copies of receipts for lodging, meals, out-of-town travel expenses (such as airline tickets) and all other charges of $25.00 or more (other than mileage) must be attached.

(G) When paying expenses (such as meals) for other individuals, the names of the other parties must be indicated and the relation to bar activity disclosed.

(H) CLE speaker expense in excess of bar CLE policy may be reimbursed. The reimbursement must be provided for in the section's annual budget as an "excess speaker expense."

(I) The travel expenses of the companion of a bar CLE speaker may be reimbursed in the same amounts and for the same items as otherwise allowed for the speaker. The reimbursement for a CLE speaker's companion must be provided for in the section's annual budget as an "excess speaker expense."

(6) *Time Limits for Reimbursement Requests.* Reimbursement requests must be submitted within 30 days of the end of the reporting quarter. Expense reports due for periods ending on June 30 must be filed by July 15. A section may hold expense reimbursements for the last quarter of the fiscal year until July 15. An officer designated by the section may approve reimbursements outside these limits if there are extenuating circumstances.

**(f) Conflicting Policies.** Sections may establish policies specific to the individual section within the umbrella policies of the bar. The bar policy will override the section policy if there is a conflict between them.

## 5.55 SECTION STAFF TRAVEL

Travel expenses for the section's assigned program administrator or an approved substitute will be charged to the section when the travel is necessary to support the section's activities. Expenses for travel that is necessary for a CLE activity will be charged to the assigned course number and considered a direct cost. The bar will pay from agreed section support fees for staff travel expenses for administrative needs such as training a new program administrator or professional development.

## 5.56 SECTION ADMINISTRATIVE SUPPORT POLICY (SECTION MANAGEMENT)

Each section must use bar staff and services, to the extent they are available, to perform and coordinate the day-to-day tasks required to support the level of activities provided for in the section's budget.

**(a) Basic Section Support Services.** The bar will provide basic section support services in an amount of $10 per member for the first 1,000 members and $5 per member for each additional member at no charge to the section.

**(b) Section Management Fees.** Sections will pay the bar a per-member section management fee based on bar support of section activities. The section management fee covers basic administrative support including staff time and general administrative overhead to provide the basic level of support needed for each section to organize and staff routine meetings, section service projects as defined in the 600 series of these policies, and member events; organize and distribute routine member communications; and perform routine administrative tasks such as bookkeeping and budget preparation and tracking. Each section will budget for section management fees in 1 of 3 categories (low, medium, or high), depending on that section's level of required bar support for estimated section activities for the upcoming fiscal year. The section management fee will be published as part of the annual budget instructions provided to sections for budget preparation and will not be changed during the budget year.

**(c) Special Projects Support Fees.** Sections will pay to the bar a separate special projects support fee when the section undertakes special projects or requests IT services that exceed the basic level of support described in (a) and (b) above. The bar will prepare an estimate based on time and expense to complete the special projects as agreed between the bar and the section and included in the section's budget.

**(d) Section Budget Process.** As part of the annual budget preparation process, each section will provide an estimate of the level of effort that will be required from bar staff to support the planned section activities, which must include the number of:

(1) section service projects, including whether they will be held in conjunction with scheduled bar meetings;

(2) section retreats, executive council meetings or other committee meetings, including whether they will be held in conjunction with scheduled bar meetings;

(3) meals or social events to be organized;

(4) newsletters to be prepared, including their approximate size; and

(5) audio events, webcasts and/or conference calls, including the type of materials to be provided.

**(e) Adjustments.** The bar's CFO will compare the section's budget estimate to the section's actual activities at the end of each fiscal year to determine if adjustments are necessary for variances between the estimated section management fee and the section's actual activity for that year. The bar will calculate any fiscal adjustments to the section management fee collected by the bar based on the difference between the estimated category and the actual activity of the section. The section will include the fiscal adjustment in its budget for the next budget cycle being prepared.

## 5.57 GUIDELINES FOR GROUPS SEEKING SECTION STATUS

**(a) Petition.** Any group, organization or committee must petition the board for approval to become a section. The petition must be filed with the executive director and include the following:

(1) a statement of the basic purpose of the proposed section, including the specific areas of interest of the proposed section;

(2) a statement demonstrating the need for the proposed section's creation;

(3) a statement showing the overlap, if any, existing between the proposed section's purpose and areas of interest and those of any current bar section or committee;

(4) a list of initial officers, executive council members and proposed committees;

(5) a list of proposed meeting dates for the executive council and committees for the initial year;

(6) a set of proposed bylaws that comply with all applicable standing board policies;

(7) a detailed budget of estimated income and expenses, containing a dues structure sufficient to generate at least $3,000.00 in dues income for each of the first 3 years of operation;

(8) a statement of the types of programs proposed and a specific proposal for programs for the year of establishment, including dates and the cost of the proposed programs; and

(9) an estimate of how many bar members will join the proposed section within its first 3 years.

**(b) Signatures; Certification.** The petition will be signed by the chair-pro tempore, chair-elect and all members of the initial executive council; and certify that at least 1 percent of bar members in good standing have expressed an interest in joining the proposed section and paying the proposed dues.

## 5.70 DIVISIONS OF THE FLORIDA BAR

The bar will maintain a current list of its divisions and will post the list on its website. A division is a group of bar members sharing a specific demographic, organized to address the needs and concerns of its members and encourage participation in the bar.

## 5.71 GENERAL DIVISION ADMINISTRATIVE POLICIES

All policies applicable to section budgeting, disbursements, staff travel and time reporting are applicable to bar divisions, and all policies applicable to groups seeking section status are applicable to groups seeking division status unless otherwise specified in these policies.

## 5.80 BOARD REVIEW OF BAR DIVISIONS, SECTIONS AND SUBSTANTIVE LAW COMMITTEES

The board will review bar divisions, sections and substantive law committees at the end of their third full fiscal year of existence and periodically as the program evaluation committee determines. The review will include:

**(a)** the programs and purposes of the division, section or committee, compared to the initial statement submitted with the petition for section status or proposal for the creation of the division or committee;

**(b)** whether the division, section or committee is fulfilling the goals and objectives stated in the petition for section status or proposal for the creation of the division or committee;

**(c)** comparison of the division's, section's or committee's 3-year budget projected in the petition for section status or the proposal for creation of the division or committee and the actual budgets for those 3 years;

**(d)** determination of whether the division's or section's dues and income are sufficient to fund the operation of the section or division without further bar financial support;

**(e)** determination of whether the division, section or committee has maintained adequate membership levels and attendance; and

**(f)** whether the division, section or committee functions within the bar's framework and furthers the bar's goals and purposes.

## 600 CONTINUING LEGAL EDUCATION

### 6.10 GENERAL POLICY

**(a) Policy.** The bar will provide its members with continuing legal education (CLE) opportunities, which include live, online, and recorded courses, course materials, workshops, seminars, publications, and electronic transmissions. The bar's CLE committee will adopt and implement CLE policies consistent with the board's policies.

**(b) Funds.** The board will control and budget all funds received and disbursed in connection with the CLE program.

**(c) Executive Director Responsible for CLE Program.** The executive director is responsible to the board for carrying out the bar's CLE program.

### 6.11 MASTER PLAN

The CLE committee will develop and maintain a specific 2-year master plan. All CLE presentations that the bar or its entities participate in or sponsor must be on the master plan.

### 6.12 COOPERATION WITH LAW SCHOOLS

The bar may cooperate with the CLE program of each of the law schools in Florida and with other recognized institutions and organizations. The bar may not merge or identify its total program in any area with any institution or organization.

### 6.20 AUTHORITY FOR CLE COURSES

**(a) Section and Division Authority.** The bar's sections' and divisions' primary authority in educational programs ("programs") includes:

(1) selecting the leadership for directing the program;

(2) selecting the topics of the programs for the section's or division's area of practice or interest;

(3) selecting the speakers;

(4) proposing a date, location and format for the course (live or other media); and

(5) imposing quality controls above a minimum established by the CLE committee.

Reasonable exceptions to administrative standards (for example, questions and answer periods, lunches, pricing) will be permitted if the section or division requests them.

**(b) CLE Committee Authority.** The CLE committee's primary authority includes:

(1) considering any recommendations of a sponsoring bar division, section or committee;

(2) determining the minimum fees for attendance;

(3) resolving any conflict from the selected dates, locations or format proposed;

(4) setting minimum quality standards;

(5) setting minimum administrative standards; and

(6) monitoring seminar activities of sections.

## 6.21 BAR DIVISION, SECTION AND COMMITTEE PROGRAMS

**(a) Generally.** Courses or similar programs conducted or sponsored by the bar's divisions, sections, or committees must be submitted to and approved by the CLE committee for development and/or distribution. The CLE committee will usually approve the recommendations made from divisions, sections and/or committees regarding a course's subject matter, speakers, participants and classification if the subject matter is clearly within the jurisdiction of the proposing division, section or committee. The CLE committee will resolve differences when the subject matter of a course is within the jurisdiction of more than 1 division, section or committee, or when there are other differences among divisions, sections or committees regarding courses. Any course or program in which the bar or a bar division, section, or committee is involved must be included in the budget as approved by the board.

**(b) Cosponsored Programs.** A bar division, section or committee may co-sponsor or cooperate with another professional group in presentation of an education program, provided that the other entity's purposes do not conflict with the purposes of the bar. The program's subject must be one in which the bar has a special interest or responsibility. Distribution of proceeds must be in accordance with standing board policy 6.31.

**(c) Division and Section Service Programs.** A division or section may provide educational service programs independent of the CLE committee only if the program 1) limits attendance to division or section members; 2) is conducted in one continuous session; and 3) is not designed to, and will not, result in post market sales of written or recorded materials, including books, articles, on-demand programs, CDs or DVDs. The division or section must pay all expenses and will receive all revenue for the event. The bar will charge the division or section basic section support and general division or section management fees but no additional fees for division or section service programs. The bar will charge the division or section the same administrative charge as approved CLE programs for any program not meeting the above requirements.

**d) Out-of-State Programs by Sections.** A section may sponsor a CLE course outside the state of Florida. The CLE committee will not co-sponsor courses presented by sections outside the state of Florida. Sections are responsible for all direct expenses and the associated overhead charge as outlined in standing board policy 6.31.

## 6.30 FEES FOR CLE COURSES

The CLE committee establishes minimum fees for attendance at CLE committee jointly sponsored CLE courses. Fees for programs co-sponsored with an outside group will be jointly

fixed by the CLE committee and the co-sponsor. The minimum base course fee for one-day courses will be determined as part of the annual budget process each year.

A minimum base course fee applies to a course of 5 or less continuing legal education requirement(CLER) credit hours per day; at multiple locations (no more than 3 of which may be live presentations); with no more than 5 in-state speakers; and at reasonably priced locations and facilities.

The base course fee for multi-day courses will be calculated as a minimum of the base fee for single day courses multiplied by the number of consecutive days. The total CLER credit hours must not exceed 5 hours multiplied by the number of days.

The CLE committee may charge additional fees for credit hours over 5 per day, out-of-state speakers, special materials, luncheons, honoraria, extra promotion, added committee meetings, receptions, and other similar expenditures, as well as a non-member surcharge equal to dues of a sponsoring bar section or division.

If sections request additional features or exceptions, fees will be adjusted accordingly. The CLE committee may also market live, recorded, or electronic CLE courses at prices in the approved budget.

## 6.31 DISTRIBUTION OF PROCEEDS

**(a) Course Fees.** Courses include, but are not limited to, audio, video, and electronic media. Net proceeds for CLE courses are determined after all direct and indirect expenses for the development and presentation of CLE programs are paid, including a CLE general administrative fee paid to the bar. The CLE general administrative fee represents the expected level of support needed from bar staff in order to execute the program as planned, including general course coordination, registration services, art and graphic design, bookkeeping and general program management. The CLE general administrative fee will be a per-program hour charge applied to each course based on the course plan with 8 rates. The 8 per-program hour charge rates will be published in the budget instructions provided prior to budget preparation. The time and cost related to the taping, editing and reproduction of the course materials for after-market sales will be handled as a direct expense even if paid to the bar. The following are the 8 rates:

(1) live programs requiring full service resources with fewer than 5 speakers;

(2) live programs requiring full service resources with 5 or more speakers;

(3) live programs requiring mid-range service resources with fewer than 5 speakers;

(4) live programs requiring mid-range service resources with more than 5 speakers;

(5) live programs requiring low service resources with fewer than 5 speakers;

(6) live programs requiring low service resources with more than 5 speakers;

(7) recorded or webcast programs with fewer than 5 speakers; and

(8) recorded or webcast programs with 5 or more speakers.

**(b) Non-Member Surcharges.** Bar sections and divisions will receive all non-member surcharges which are not considered revenue for revenue sharing purposes outlined in (c) below.

**(c) Net Proceeds after surcharges.**

(1) Bar sections and the bar's Out-of-State Division will receive 80% of all net proceeds as defined in (a) above and incur 80% of all losses for all CLE courses and after-market material sales.

(2) The bar's Young Lawyers Division will receive 50% of all net proceeds for Practicing with Professionalism programs and course materials, for which the bar will not charge the CLE general administrative fee.

(3) The bar's Young Lawyers Division will receive 90% of all net proceeds and incur 90% of all losses of all other courses and materials.

(4) The bar will retain the balance of the proceeds/losses in its general fund to off-set any expenses not covered by the CLE general administrative fee.

**(d) Further Distributions.** A bar section or the bar's Out-of-State Division may share its percentage of the course revenues with a co-sponsor not affiliated with the bar. A co-sponsor not affiliated with the bar is any entity outside of the bar which participates in any manner in the planning and execution of a CLE program with a bar entity.

**(e) Unique Distribution Appeal.** Variations in the distribution of proceeds may be approved by the board after consideration of the work involved and risk assumed by each of the co-sponsors and contained in the budget or a budget amendment previously approved by the board.

## 6.40 SPEAKER EXPENSES

**(a) Authorized Honoraria.** The bar will not pay honoraria to its members unless the member is a full-time college of law faculty. With advance approval of the CLE committee, the bar may pay honoraria to speakers who are full-time college of law faculty or who are not bar members.

**(b) Authorized Expenses.** Authorized expenses for reimbursement under this section include transportation expenses (including air fare, ground transportation, tolls and parking) and expenses incurred for meals and lodging. Expenses will be reimbursed for the participant only, and not for family members. Reimbursed expenses must be actual vouchered expenses as defined by bar policy.

Revenues from courses and publications may pay for authorized expenses of speakers and authors for steering committee meetings, speakers' workshops, and course presentations.

**(c) Exceptions.** Any exception to this policy is subject to advance approval of the budget committee.

## 6.50 ELIGIBILITY TO ATTEND PROGRAMS OR RECEIVE PRINTED MATERIALS AND TO PURCHASE PUBLICATIONS

Any person may attend CLE programs or purchase CLE publications. There is no limit on the number of programs or publications a person may attend or purchase.

## 700 LEGAL SPECIALIZATION AND EDUCATION

### 7.10 ADOPTION, AMENDMENT OR REPEAL OF POLICIES RELATED TO LEGAL SPECIALIZATION AND EDUCATION

The board must approve all policies relating to the certification plan, basic skills course requirement or the CLE requirement as further specified in the Rules Regulating The Florida Bar.

## 800 AMICUS CURIAE AND RULE RESPONSE POLICY AND PROCEDURES

### 8.10 AMICUS CURIAE FILINGS

**(a) Scope of Amicus Curiae Positions by Bar Sections.** A bar section may adopt a position and submit an amicus curiae brief in pending litigation only when the issue is:

(1) beyond the scope of permissible legislative or ideological activity of the bar; or

(2) within the permissible legislative or ideological activity of the bar and the proposed brief does not take a position that is inconsistent with an official position of the bar.

**(b) Scope of Amicus Curiae Positions for Bar Divisions and Committees.** A bar division or committee may adopt a position and submit an amicus curiae brief in pending litigation only when the issue is within the scope of permissible legislative or ideological activity of the bar and the proposed brief does not take a position that is inconsistent with an official position of the bar.

**(c) Additional Requirements for Amicus Curiae Positions by Bar Divisions, Sections and Committees.** Bar divisions, sections and committees may not adopt a position, submit an amicus curiae brief, or file a motion for leave to appear in pending litigation unless:

(1) the issue involved is within the area of subject matter interest of the division, section or committee as described in its bylaws or official charge;

(2) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar;

(3) the amicus curiae position is clearly identified as the action of the division, section or committee and not that of the bar unless the board or executive committee directs otherwise; and

(4) the board or executive committee has expressly consented to the filing by the division, section or committee.

**(d) Amicus Curiae Notice.** Each bar division, section or committee must provide notice to the executive director of its intent to file an amicus curiae brief and a draft of the amicus curiae brief at least 10 days before filing the brief. The notice must include the:

(1) nature of the litigation;

(2) positions(s) sought to be taken by the group as amicus curiae;

(3) anticipated effect of the litigation and the final decision;

(4) need for the division, section or committee to take the proposed position; and

(5) absence or existence of conflict with any previous position adopted by either the board or any other bar subunit and whether the other bar subunit has been contacted about its position.

In emergency situations, both the 10-day requirement and the prior submission of a completed amicus curiae brief requirement may be waived by the bar president.

## 8.20 RESPONSES TO BAR RULES PETITIONS

A bar division, section or committee may adopt a position and respond to a petition to amend any portion of the Rules Regulating The Florida Bar, Florida Rules of Court or Florida Code and Rules of Evidence with at least 10 days notice to the executive director prior to the filing of the response. In emergency situations, both the 10-day prior notice and submission of a copy of the response requirements may be waived by the bar president. Any response made by a division, section or committee must be clearly identified as the action of the group and not that of the bar, unless the board or executive committee directs otherwise.

## 900 LEGISLATIVE POLICIES AND PROCEDURES

## 9.10 AUTHORITY

These policies and procedures, combined with the amicus curiae policy and procedures in standing board policy 8.10, establish the board's powers to maintain and supervise the bar's legislative program. The legislative program will provide information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law. The bar will not advocate a legislative or political issue unless the board determines that the matter is related to the bar's purposes as set forth in the Rules Regulating The Florida Bar and is otherwise consistent with applicable court decisions. These policies govern the limits and procedures regarding legislative or political involvement by bar committees, sections and divisions.

## 9.20 ACTION BY BOARD

**(a) Procedure for Requesting Board Action.**

(1) A request that the board take action on a legislative or political issue must be submitted in the form and with the information specified in subdivision (c) of this policy. The request must be received by the executive director at least 20 days before the beginning of any regular board meeting.

(2) The executive director will circulate copies of all requests for board action on a legislative or political issue to all board members and to the legislation committee for review and action in accordance with these policies.

(3) A request for board action on a legislative or political issue that is not submitted by the deadline will not be considered until the next succeeding board meeting unless:

(A) the request is presented in writing to the legislation committee at its meeting preceding the board meeting; and

(B) the board by majority vote agrees to include the request on its agenda.

(4) The board may be called on to act on a request for action on a legislative or political issue either by:

(A) a recommendation of the legislation committee made in the form of a motion by its chair or 1 of its members; or

(B) motion of a board member addressed to matters previously considered by the legislation committee.

(5) Consideration of any request for action on a legislative or political issue by the board must be consistent with the Rules Regulating The Florida Bar and proceed in the following order:

(A) an affirmative vote by a 2/3 majority of those present and voting that the proposed legislative or political action is within the scope of the bar's authority under the Rules Regulating The Florida Bar and applicable court decisions;

(B) if the vote is affirmative, a second affirmative vote by 2/3 of those present and voting that the specific legislative or political position is adopted.

**(b) Appearances before Board or Committees.** The legislation committee, the board, or the executive committee may allow any interested person to appear before it in support of or in opposition to any legislative or political action being considered, subject to reasonable limitations on available time.

**(c) Requests for Bar Position.** Requests that the bar take a position on a legislative or political issue must be accompanied by a copy of the pertinent legislation or a detailed presentation of the political issue, together with the following information:

(1) identification of, reference to, or copies of similar legislation or presentation being considered by the legislature or other body;

(2) a statement concerning the known principal proponents and opponents of the legislative or political issue including, if possible, a brief statement of the reasons for opposition or support by the other interests;

(3) a statement of the known position on the legislative or political issue taken by any bar division, section, or committee that considered the matter including the principal reasons for support of or opposition to the issue; and

(4) confirmation that notice of the proposed legislative or political action has been circulated to all bar divisions, sections, and committees that may be interested in the issue, together with a statement identifying all groups the notice has been submitted to for comment, and reciting the comments received.

**(d) Duration of Bar Positions; Notice to Board.** A position with regard to a legislative or political issue, once adopted or recognized by the board, will remain a bar position for the full biennial legislative session during which the board adopted or recognized the position, unless reversed or rescinded. The executive director will notify the board at its July meeting of the bar's legislative and political positions.

**(e) Form of Position.** If formalized, a position on legislative or political issue will indicate support of, opposition to, or a neutral position on, the issue. The position may be that the bar will provide nonpartisan technical assistance on the issue.

**(f) Categories of Legislative Activity.** The board or the executive committee may provide for different categories designating the extent of the bar's activity in support of, or in opposition to, a legislative or political issue. The categories may include the following:

(1) *Active Support or Opposition.* The bar, through its agents, will actively support or oppose a legislative or political issue in appropriate public and governmental forums.

(2) *Approved or Disapproved.* The bar either approves or disapproves a legislative or political issue.

**(g) Effect of Board Consideration.** Requested legislation or political action must receive a 2/3 vote by the board to be considered board action. Legislative or political issues that do not receive the required 2/3 vote will not be considered action by the board.

**(h) Review of Past or Current Positions.** Any member of the board or the executive committee may request review of a past position. Review of a past position is required on a majority vote of those present. A current position on a legislative or political issue may be altered, amended, or withdrawn by a 2/3 vote of the board members present at the meeting.

**(i) Publication of Legislative and Political Positions.** The Rules Regulating The Florida Bar govern the official notice and publication of positions on legislative and political issues adopted on behalf of the bar.

**(j) Objection to Legislative and Political Positions.** The Rules Regulating The Florida Bar and applicable court decisions govern the procedures for member objections to legislative and political positions adopted on behalf of the bar.

## 9.21 ACTION BY EXECUTIVE COMMITTEE OR PRESIDENT

**(a) Action by Executive Committee.** The executive committee will not take action on a legislative or political issue unless the executive committee determines by majority vote of those voting that:

(1) the requested legislative or political action could not reasonably have been submitted for board consideration in accordance with existing policies, or,

(2) there has been a significant material change in circumstances since the last board meeting making it necessary that the bar take legislative or political action.

**(b) Review of Matters Previously Considered by Board.** The executive committee will not take action on a matter previously acted on by the board unless there has been a significant material change in circumstances.

**(c) Required Votes.** When making recommendations or acting on a legislative or political issue, the executive committee must:

(1) affirmatively establish by 2/3 majority vote of the committee that the proposed legislative or political action is within the scope of the bar's authority as set forth in the Rules Regulating The Florida Bar and applicable court decisions; and

(2) if the vote is affirmative, a second affirmative vote by 2/3 of those present that the specific legislative or political position is adopted.

**(d) Action by President.** The bar president, on consultation with the bar president-elect and the chair of the legislation committee (if possible), may act on a pending request for action on a

legislative or political issue if the legislature is in session or an emergency exists and it is not feasible for the executive committee to act.

**(e) Report to Board.** Any legislative or political action taken by the executive committee or bar president must be reported to the board at its next meeting.

## 9.30 LEGISLATION COMMITTEE

**(a) Structure.** The legislation committee is composed of 9 current board members.

**(b) Appointment; Terms.** The bar president-elect appoints 3 members and names a chair-elect. The chair-elect becomes chair when the bar president-elect becomes president. Terms of all members are 3 years.

**(c) Purpose.** The legislation committee will develop recommendations for the board on requests that the board adopt or recognize a legislative or political position.

**(d) Report to Board.** The legislation committee will make a recommendation to the board. The committee will determine whether the proposed action is within the scope of the bar's authority under the Rules Regulating The Florida Bar and applicable court decisions. The committee will also determine whether any legislative or political position should be formally adopted or recognized by the board.

**(e) Authority to Draft Legislative or Political Concepts.** The legislation committee has the authority to draft and submit recommendations to the board on legislative or political concepts which may, or should be, the subject of legislation or other advocacy.

## 9.40 PROCEDURE FOR HIRING ADVISOR AND CONSULTANTS

**(a) Counsel or Advisor.** The bar may hire an advisor on a part-time as needed basis to advise the bar on legislative or political matters. The advisor may also represent the bar in communicating the bar's position to the committees and individual members of the legislature or to other governmental officials. The person employed may or may not be an attorney. If the person employed is an attorney, the person will be known as "legislative counsel."

**(b) Term of Employment.** The person will be employed for a 2-year period to coincide with the 2-year legislative session. The term will commence July 1st and end June 30th 2 years later.

**(c) Review of Performance.** The bar president, president-elect, executive director, and/or the chair of the legislation committee will review the performance of the legislative counsel or advisor and, when appropriate, review the terms and conditions of a contract and consider any applicants for the position.

**(d) Recommendation of Employment.** Six members of the legislation committee must affirmatively vote to recommend employment of a legislative advisor.

**(e) Time of Recommendation.** The committee will make its recommendation to the board no later than October. The legislative counsel or advisor should be retained by the bar in time to attend and participate in the Florida Legislature's organizational meetings held in November.

**(f) Retention of Other Consultants and Experts.** The legislation committee may recommend and the board may approve retaining consultants and expert witnesses for legislative and political matters. If the board is unable to timely act on the recommendation, the executive committee may approve retainers for consultants and expert witnesses provided the cost is within the previously approved budget for legislative and other political activities.

## 9.50 LEGISLATIVE AND POLITICAL ACTIVITIES OF BAR SECTIONS

**(a) Authority.** The board will permit a bar section to take a position on a legislative or political issue only when the issue:

(1) is within the section's subject matter jurisdiction as described in the section's bylaws;

(2) either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed section position is consistent with an official bar position on that issue; and

(3) does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

**(b) Procedures.** Sections engaging in legislative or political activities must adopt procedures to determine legislative and political positions. The procedures must be reviewed by the board's legislation committee and approved by the board before each legislative biennial. The procedures must include the establishment of a legislation committee composed of at least 3 members who will serve staggered terms. Two-thirds of the executive council members present must determine that the matter is within the section's scope. A majority of the executive council members present must approve the position.

**(c) Notice of Bar Positions.** The executive director will give periodic notice to the sections of their recognized positions or activity and the bar's official positions on legislative or other political issues.

**(d) Notice of Bar Section Proposals.** Bar sections must advise the bar of proposed legislative or political activity by providing written notification to the executive director. The proposal must be circulated to all bar divisions, sections, and committees that may be interested in the issue. The written notice must identify in writing all groups the proposal has been submitted to for comment and include the comments received. When a decision is needed within 60 days, the proposal must include an explanation of the need for an expedited decision, and request a specific deadline for a decision by the bar.

**(e) Bar Response.** The legislation committee and the board will review a section's proposed legislative or political activity unless an expedited decision is required. The executive committee may review the section proposal if expedited review is requested. The bar president, president-

elect, and chair of the legislation committee may review a section proposal if the legislature is in session or an emergency exists and the executive committee is unable to act. The bar must immediately give written notice to the section of the decision on proposed legislative or political activity.

**(f) Prohibition from Advancing Section Position.** The bar may prohibit the section from acting on or advancing a position only when it finds that the position fails to meet the criteria of subdivision (a). The section may not advocate a position or take other proposed action if the board or a court prohibits the proposed position or activity. The board must provide written notice of the board's prohibition within 60 days after the executive director receives the section's notice.

**(g) Review of Executive Committee or President's Action.** The section may request board review of the executive committee or bar president's decision to prohibit the section's proposed legislative or political activity. The review must be at the board meeting immediately following the date the section was noticed of the decision.

**(h) Coordination with The Florida Bar.** A section must clearly distinguish its legislative and political activity from that of the bar. Each section must coordinate its legislative and political activity with the bar. Each section must advise of any section representatives who might make direct personal contact with governmental officials to further any section position or activity on a legislative or political issue.

## 9.51 PROCEDURE FOR HIRING SECTION ADVISORS

**(a) Bar Approval Required.** The board must approve a bar section's retention of a legislative or political advisor.

**(b) Request for Approval; Contents.** A section must submit a request for approval to retain a legislative or political advisor. The request for approval must be submitted to the board and contain the following information:

(1) the name and address of the proposed advisor;

(2) the proposed contractual terms for the advisor's contract;

(3) a statement showing the need for hiring the advisor;

(4) a list of current legislative clients of the advisor and the advisor's firm;

(5) an agreement that subsequent legislative or political clients will be disclosed to the bar at least 5 days prior to the advisor or any member of the advisor's firm beginning representation of the subsequent client and that any subsequent conflicts will be disclosed immediately;

(6) a provision that the bar may terminate the contract if it decides that the section advisor or a member of the advisor's firm does not act within the bar's best interests; and

(7) an agreement that the advisor will work on bar legislative or political matters if the executive director believes bar participation is necessary and in the best interests of the bar's membership. If this occurs, the cost of the advisor's time will be assessed against the section, unless this creates a shortage or hardship on the section. In that event, the bar may reimburse the section for the appropriate amount of the expense.

**(c) Review of Requests and Report to Board.** The legislation committee and the executive director will review proposed contracts and make recommendations to the board for a section's legislative or political advisor.

**(d) Notice to Executive Director.** A section's advisor must agree to communicate all significant legislative or political developments to the executive director.

**(e) Budget Limit on Section Legislative or Political Activity.** A section may use section membership dues and other revenue for legislative activities, but may not budget or expend for legislative activities any amount that will result in a negative projected year-end fund balance.

## 9.60 LEGISLATIVE AND POLITICAL ACTIVITIES OF BAR DIVISIONS AND COMMITTEES

Bar divisions and committees may advance a legislative or political position only if the issue is within the scope of the bar's permissible activity, is within the area of subject matter interest of the bar division or committee, and is authorized by the board.

## 9.70 ADVICE AND CONSULTATION WITH GOVERNMENTAL OFFICIALS OR OTHERS BY BAR MEMBERS

These policies do not preclude lawyers from presenting their individual personal views to the Florida Legislature, the United States Congress, or any other person or body on any legislative or political matter.

## 1000 PROGRAM EVALUATION AND STRATEGIC PLANNING POLICY AND PROCEDURE

### 10.10 PURPOSE AND INTENT OF PROGRAM EVALUATION

The board will review and evaluate the bar's programs on an ongoing basis. The board will establish a process to provide appropriate, ongoing review and evaluation through appropriate board committees. The review and evaluation of a program includes determining whether the program should be continued and is adequately funded to achieve its purpose. The program evaluation committee will coordinate the involvement of the appropriate committees.

### 10.11 DEFINITIONS

**(a) Evaluate.** Evaluate or evaluation is the process to determine the significance or worth of a program by appraisal and study.

**(b) Guidelines and Standards.** The guidelines and standards are the general criteria used to evaluate the bar's programs and services established by the program evaluation committee and approved by the board.

**(c) Priority.** Priority is a preferential rating of a program.

**(d) Program.** A program is a bar activity that is considered a separate unit for audit and other reporting purposes. Bar services are also considered programs.

**(e) Proposed Program.** A proposed program is a program that has been requested and requires board approval.

### 10.20 PROGRAM EVALUATION COMMITTEE

**(a) Composition; Appointment; Terms.** The program evaluation committee is composed of 2 members of the budget committee (including its chair) who serve terms of 1 year plus 5 current board members appointed by the bar president-elect to serve 2-year staggered terms.

**(b) Report to Board.** The program evaluation committee will submit to the board its recommendations for programs to be evaluated and any new or revised guidelines and standards for evaluating bar programs.

**(c) Review of Programs by Program Evaluation Committee.** The program evaluation committee will review and evaluate existing bar programs. In addition, the committee will evaluate all proposed programs and proposed modifications or expansions of existing programs prior to their implementation or funding. The evaluation will be based on the policies and guidelines and standards for bar programs approved by the board.

**(d) Responsibility of Executive Director.** The executive director will distribute forms designated as "The Florida Bar Program Description" to those individuals responsible for bar programs. The program evaluation committee will use the program descriptions as a guide in its evaluation and review of bar programs.

## 10.30 PROGRAM EVALUATION POLICY

**(a) Programs Proposed by Membership; Staff Assignments.** A program proposal may be developed and proposed by a minimum of 10 bar members in good standing. The executive director may appoint a staff person to assist in the development of the proposal.

The program proposal must be received by the planning and evaluation department at least 30 days prior to the program evaluation committee meeting at which it is to be considered. A 3-year fiscal impact statement must be included with the proposal. After the program evaluation committee reviews the proposal and makes any recommended changes, the proponent will send a detailed budget to the finance and accounting department for review. After the finance and accounting department approves the budget, it will send the proposal to the budget committee for review and approval.

**(b) Surveys.** All surveys conducted by the bar, except those supporting the strategic planning committee, must be reviewed by the executive director, who may refer surveys to the program evaluation committee for review.

The survey request, supporting information, and the budget request must be submitted, in writing, to the program evaluation committee no later than 2 weeks prior to its next regularly scheduled meeting. The party requesting authority to conduct the survey will be responsible for funding the costs of the survey.

## 10.40 PROGRAM EVALUATION PROCEDURE

**(a) Program Evaluation Committee.** The program evaluation committee establishes the review and evaluation guidelines and standards for bar programs. The committee may require bar staff or any bar member to provide information to evaluate a bar program. The committee uses program description forms as a guide in its evaluation and review of bar programs.

**(b) Budget Committee.** The budget committee has the following responsibilities:

(1) The budget committee establishes the budget schedule for the ensuing fiscal year in consultation with the bar president-elect and executive director. Budget worksheets and related instructions are distributed to the individuals responsible for the preparation of the various bar section, committee and department budgets in sufficient time to allow for compliance with the schedule. The budget schedule will be in accordance with applicable provisions of the Rules Regulating The Florida Bar.

(2) The budget committee reviews all proposed budgets and provides the program evaluation committee with its recommendation for programs to be evaluated.

(3) At the penultimate board meeting during the bar's administrative year, the budget committee will present to the board its recommended budget for the bar for the ensuing fiscal year.

(4) The budget committee evaluates all proposed changes to the published budget of any bar section, committee or department, whether the change is in the budget for the

current fiscal year or for the ensuing fiscal year and makes recommendations to the board at the next board meeting.

## 10.50 STRATEGIC PLANNING

**(a) Annual Strategic Planning Workshop.** The strategic planning committee will conduct an annual comprehensive strategic planning workshop to update the bar's strategic plan. The strategic planning committee will provide a copy of the updated plan to the board.

**(b) Consistency with the Strategic Plan.** All bar programs and all board actions must be consistent with the bar's purpose and strategic plan. The program evaluation committee requires that all funding and program requests state how and where the request fits into the bar's strategic plan.

**(c) Composition.** The bar president-elect will chair the strategic planning committee. The strategic planning committee will be composed of the members of the executive committee, the bar president-elect designate once certified to the court, the president-elect of the young lawyers division, the chair and chair-elect of the council of sections, and the chairs-elect of the budget, communications, disciplinary review, legislation and program evaluation committees.

## 1100 MEETINGS AND CONVENTIONS

### 11.10 MASTER CALENDAR OF MEETINGS

The executive director will work with all legal organizations in the state to create a master calendar of meetings to eliminate any future conflicts in meeting dates and enable the bar to better plan its activities.

### 11.20 ANNUAL CONVENTION

The bar's annual convention will be held before July 1 of each year.

### 11.30 COMMITTEE LEADERSHIP CONFERENCE

The incoming bar president with assistance of the bar's public information director will designate a time during the annual convention for a meeting of incoming committee chairs.

### 11.40 WORKING MEETING

There will be an annual working meeting of bar committees, sections and divisions combined with CLE opportunities at a place approved by the executive director. All bar standing committees and special committees or commissions designated by the bar president have the opportunity to participate in this meeting.

### 11.50 EXHIBITS AND SPONSORSHIPS

**(a) Exhibit Space and Sponsorships.** The executive director will determine whether exhibit space or sponsorships will be offered at bar meetings. The executive director will also determine the amount and location of exhibit space, and the events and sponsorship fees offered.

**(b) Fees.** The executive director or authorized representative will establish a fee for each exhibitor during any meeting unless otherwise specified. Exhibitors must pay the necessary costs of setting up, maintaining and dismantling their exhibit. The executive director or authorized representative will establish an appropriate sponsorship fee based on the type of event sponsored and the items included in the sponsorship package.

**(c) Rejection of Exhibits.** The executive director may reject any exhibit or sponsorship that does not meet the bar's criteria for propriety, attractiveness and good taste, or for which adequate space is not available.

**(d) Regulations for Exhibits and Sponsorships.** All exhibits will be set up with minimal difficulty to the bar and the hotel. All exhibitors and sponsors must conform to all policies of the bar and the meeting site. Live or prerecorded music is not allowed at exhibit booths without prior written approval from the executive director or authorized representative.

**(e) Dismantling Exhibits; Duration of Sponsorships.** An authorized bar representative establishes a time and date that exhibits must be dismantled. Any sponsorship activity will be

limited to the sponsored event unless additional exposure time is approved by the executive director or authorized representative.

**(f) Financial Responsibility for Exhibitors or Sponsors.** The bar is not responsible for any unauthorized charges incurred by exhibitors or sponsors, nor for charges accruing from the transportation, setting up or dismantling of exhibits or materials relating to sponsored events, or for any damages or loss of materials by exhibitors or sponsors.

**(g) Insurance for Exhibits/Sponsors.** Each exhibitor must provide proof of liability insurance prior to the exhibition date, in an amount approved by the executive director. The bar is not responsible for loss to exhibitors' or sponsors' property by fire, theft or personal liability.

**(h) Registrant Names for Exhibitors/Sponsors.** Exhibitors and sponsors may request the names and addresses of annual convention registrants. The bar will provide the information after the convention, in a format consistent with applicable policy.

**(i) Use of Exhibit Booths.** Booths must be properly staffed during exhibit hours. Any exhibitor making direct sales during a meeting is responsible for collecting and forwarding applicable taxes to the appropriate agency. Exhibitors are not permitted to sublet any portion of their space, or market any merchandise or services other than their own.

## 1200 RESERVED FOR FUTURE USE

## 1300 COMMUNICATIONS POLICY AND PROCEDURES

### 13.10 COMMUNICATIONS POLICY

**(a) Responsibility of Staff and Committees.** The bar's communications staff and related committees conduct the bar's external and internal communications activities in accordance with communications policies and priorities established by the board through its communications committee.

**(b) Responsibility of Executive Director.** The executive director has ultimate management responsibility and is responsible to the board for the activities and programs of the communications staff.

**(c) Authorized Staff Activities.** Bar staff will:

(1) publish the bar *Journal*;

(2) publish the bar *News*;

(3) maintain an Internet website to communicate timely information to members, the news media, the general public, and other interested parties and to provide two-way communication with members in addition to or in lieu of other modes of communication;

(4) assist in gathering and interpretation of public opinion from internal and external sources as input for bar policymakers;

(5) counsel leaders of the bar on ways to maintain good communications and devise and carry out programs designed to enhance understanding of the bar's policies and programs;

(6) coordinate activities of the bar's Citizens Advisory Committee, a voluntary advisory group established by the board representing major citizen constituencies, the operation and responsibilities of which are defined in the Citizens Advisory Committee charter;

(7) establish and maintain communication with the general public, local/voluntary bar associations, bar members, judiciary, news media, and the bar's sections, committees, and divisions;

(8) make recommendations to the communications committee as to the need, cost effectiveness and priority of any advertising campaign proposed by any of the bar's sections, committees, divisions or programs;

(9) provide all communications services, including selection, coordination and supervision of outside consultants, for all communications activities of the bar's programs, sections, divisions or committees; and

(10) engage in continuous fact and opinion research affecting the bar; develop and distribute public education/information pamphlets, news releases and announcements for TV and radio; operate a bar speakers bureau; and continuously evaluate public reception to the bar's operations and policies.

**(e) Crisis Management/Disaster Response Plan.** The bar's crisis management/disaster response plan, approved by the communications committee, establishes guidelines for responding to crisis or disaster situations significantly impacting the bar, its members and the state of Florida. Under the plan:

(1) The bar president and/or executive director will:

(A) determine that a crisis exists;

(B) declare the Crisis Management/Disaster Response Plan in force; and

(C) expeditiously convene the crisis management task force (executive committee and designated key staff members) to oversee implementation of the plan.

(2) After determining the extent of the crisis and pooling all available information, the crisis management task force will develop an initial statement, designate primary and secondary spokespersons, and determine if a crisis response team should be dispatched to the impacted area.

(3) Board members and other key bar leaders will be expeditiously notified of actions being taken, and appropriate information will be disseminated to bar members and the general public.

(4) When the crisis has passed, the communications director will prepare a full report to the board on the crisis situation, its impact and associated actions taken.

(5) Operational details of the plan will be updated annually. A copy of the updated plan will be furnished to each board member, and copies of the plan will be on file in the offices of the bar president, the executive director and the communications director.

**(f) Bar *Journal* and *News* Editorial Policy.**

(1) *Subject Matter of Published Material.* The editorial policy of the bar *Journal* and *News* is to publish articles, news and other information that may help advance the education, competence, ethical practice and public responsibility of Florida lawyers and increase their awareness of the official and informal activities of their profession. Articles of publishable quality and scholarship that meet these criteria may be published even though they may involve controversial subjects or unpopular points of view.

(2) *Publication of Comments from Membership.* The bar *Journal* and *News* policy is to publish member comments on matters of concern to the legal profession, provided the comments:

(A) are directed specifically to the *Journal* or *News* for publication;

(B) are neither patently false nor defamatory; and

(C) focus criticism on issues, rather than individuals acting in their individual capacities.

Staff may clarify or edit comments based on space considerations, or the number and nature of comments received on any single topic.

(3) *Notice to Chair of Editorial Board.* The executive director will give notice to the chair of the bar *Journal* and *News* editorial board of any topic for publication or of any matter affecting editorial policy or content of the bar *Journal* or *News* considered by the board.

**(g) Advertising Policy of the Bar *Journal, News* and Website.**

(1) *Illegal or Inappropriate Advertising.* The bar *Journal*, *News* and website will accept all advertising except advertising:

(A) for products or services that are illegal or whose movement in interstate commerce is illegal;

(B) relating to contests, lotteries, or the offering of prizes based on chance, unless clearance is obtained from the United States Postal Service;

(C) that is not in keeping with the publications' standards of ethics and propriety; or

(D) that is derogatory or demeaning.

(2) *Advertising Contrary to Bar Rules or Code of Judicial Conduct.* Advertising by which the advertiser violates or enables another to violate the Rules of Professional Conduct or the Florida Code of Judicial Conduct will not be accepted. The opinions and interpretations of staff counsel and appropriate bar committees charged with authority to interpret the rules or codes will be controlling.

(3) *Restricted Products or Services.* If the advertising of a product or service is prohibited or regulated in a state or states, but not in all states or by federal law, the publisher or web coordinator reserves the right to reject the advertising unless proper disclaimers are included in the copy regarding the validity of the advertising in the restricting states.

(4) *Advertising Affecting Bar's Mailing Status.* Advertising must not contain material or be designed in a manner that would jeopardize the mailing status of the publication. The publisher may require clearance from the United States Postal Service prior to acceptance of an advertisement.

(5) *Prior Examination of Mail Order Products.* The publisher or web coordinator may require examination of a product before accepting an advertisement for mail order products.

(6) *Priority of Advertising.* Advertising space for the bar and its affiliated programs will be provided at cost and as space permits, with priority space given to commercial advertising. Space for public service advertising will be provided free of charge when available.

(7) *Advance Payment.* The publisher or web coordinator may require partial or full payment before publishing advertising.

(8) *Political or Ideological Advertising.* The bar *Journal*, *News* and website will segregate and identify all classified advertisements of a political or ideological nature under the "miscellaneous" heading, and distinctly mark each display advertisement as a "paid advertisement."

(9) *Disclaimer*. The bar *Journal*, *News* and website will publish an appropriate disclaimer stating that publication of an advertisement reflects no endorsement of the advertiser's goods, services or opinions.

## 13.20 COMMITTEE ORGANIZATION

### (a) Communications Committee.

(1) *Membership.* The communications committee is composed of at least 10 members including:

(A) a member of the budget committee;

(B) a member of the program evaluation committee;

(C) board liaisons to the *Journal* and *News* editorial board, voluntary bar liaison committee, and media and communications law committee; and

(D) a chair-elect appointed by the bar president-elect who will become chair when the bar president-elect becomes president.

The bar president-elect should consider reappointments to help achieve continuity of bar communications policy and programs.

(2) *Responsibilities.* The primary role of the communications committee is to ensure continuity and focus of internal/external communications to support the bar's organizational and strategic objectives. The committee will make recommendations to the board on the bar's communications policies, the communications impacts of strategic plans and objectives, and the coordination of issues and crisis communications. The committee ensures that the bar uses the most effective means for communicating with bar members, the news media and the general public. An element of the bar's communications program is

The Florida Bar Speakers Bureau which promotes and coordinates the delivery of the bar's key messages directly to the general public by lawyers.

**(b) The Bar *Journal* and *News* Editorial Board.** The bar *Journal* and *News* editorial board advises and assists the editorial staff to develop articles of current interest and concern to the profession and, as a reviewing board, in selecting worthy manuscripts for publication.

**(c) Media and Communications Law Committee.** The media and communications law committee coordinates the bar's media-law activities such as the media-law conference, law-related educational programs for journalists, the Reporter's Handbook and the media awards program.

**(d) Voluntary Bar Liaison Committee.** The voluntary bar liaison committee recommends improvements in relationships with local/voluntary bars to the communications committee. The voluntary bar liaison committee promulgates and sponsors publications and conferences to improve relations with and effectiveness of local bar leadership. The committee also promulgates and promotes Florida bar and voluntary bar information and programs to promote public understanding of the legal system, the judiciary, the role of lawyers, patriotism, and the responsibilities of citizenship, with special emphasis on development of themes and programs for law week.

## 1400 UNJUST CRITICISM OF JUDGES

### 14.10 RESPONSE

The bar should respond to unjust criticism of judges only in those cases that are serious and require a response. The bar will not respond in every instance where a judge or the judiciary is criticized because responses may over-emphasize and over-publicize the criticism.

### 14.20 BAR PUBLIC RESPONSE TO CRITICISM OF A JUDGE OR COURT

**(a) Responses Permitted.** The bar should respond publicly to criticism of a judge or court if it is unwarranted or unjust and adversely affects the administration of justice or involves a pending case. Unwarranted or unjust will be determined on a case-by-case basis.

**(b) Responses Prohibited.** The bar should not respond to criticism of a judge, even if unwarranted or unjust, when made during judicial campaigns because a judge may respond to criticism made during judicial campaigns and any response by the bar may be construed as an endorsement of a particular candidate for judicial office.

### 14.30 PROCEDURE FOR DETERMINING WHETHER TO RESPOND

Board members, leadership of the local bar association from the area in which the judge or court is located, and bar staff should conduct an investigation of the unwarranted or unjust criticisms of judges or courts prior to making a response. If time permits, the board will decide whether to respond to criticism~~s~~ of judges. If time is limited, the board's executive committee will make the decision. The bar president or staff will not make any decisions regarding the bar's response.

### 14.31 POINTS TO BE CONSIDERED IN DETERMINING WHETHER TO RESPOND

In determining whether the bar will respond to criticism of a judge, the bar will consider the situation and the applicable factors such as:

**(a)** the identity of the person or group making the criticism and the nature of the criticism;

**(b)** federal and state constitutional protection of the right to express disagreement with the decisions of judges;

**(c)** judges have no control over what cases come before them, must decide all of those cases, must follow the law as established by higher courts, and one side always loses in every lawsuit;

**(d)** judges are not wholly free to defend themselves and it is ordinarily not appropriate for them to personally answer criticism of them or their decisions;

**(e)** lawyers, under the Rules Regulating The Florida Bar, have a duty to defend judges against unjust criticism;

**(f)** the reasons for which the particular criticism is considered unjust;

**(g)** taking a position on the merits of the controversy may eliminate any educational benefit of debate on the issue;

**(h)** the organized bar needs to remind lawyers and the public that impartial judges, free from political pressures, who will not be influenced by unjustified criticism of them or their decisions, are essential to a fair, impartial and independent judicial system;

**(i)** decisions of judges may be reviewed in appellate courts and, if appropriate, corrected; and

**(j)** changes to the law may be sought through legislative action or constitutional revision.

## 14.32 METHOD OF RESPONSE

**(a) Form and Manner.** The bar will respond in a form and manner to receive the same exposure and notoriety as the criticism.

**(b) Form Tailored to Circumstances.** The bar will authorize a specific person to respond for the bar. The response should be tailored to the specific criticism, considering the response's audience (bar members or the general public), the points for consideration in standing board policy 14.31, and any other relevant facts and circumstances.

**(c) Coordination with Bar Staff.** The bar's public information and bar services director will coordinate contacting the news media about the response.

**(d) Coordination with Local Bar Groups.** The bar will coordinate its response with local bar associations, if practicable.

## 1500 LAWYER REGULATION POLICIES

## 15.10 WAIVER OF DISQUALIFICATION

**(a) Conflict of Interest and Waiver.** Rule Regulating The Florida Bar 3-7.11 prohibits certain lawyers from representing a respondent in a disciplinary matter due to conflict. Conflicts of interest may be waived by the executive director or the board as set forth in this policy.

(1) *Current Board Members.* No current board member may represent a respondent in a disciplinary matter.

(2) *Members of a Current Board Member's Firm.* The executive director or board may consent to a member of a current board member's law firm representing a respondent in a disciplinary matter if:

(A) the respondent is also a member of the board member's law firm;

(B) the representation of the respondent in the disciplinary matter predated the board member's initial date of board service and refusal to allow continued representation would be a substantial hardship for the respondent; or

(C) the representation of the respondent in the disciplinary matter predated the date on which the board member and respondent's counsel became members of the same law firm and refusal to allow continued representation would be a substantial hardship for the respondent.

(3) *Former Board Members and Members of a Former Board Member's Firm.* Former board members and any member of their law firms may represent a respondent in a disciplinary matter during the 1-year disqualification period if the former board member had no involvement in the disciplinary matter and if the matter was not pending with the bar as of the date the former board member's term expired.

(4) *Grievance Committee Members.* No current member of a grievance committee may represent a respondent in a disciplinary matter.

(5) *Members of Grievance Committee Members' Law Firms.* A member of a grievance committee member's law firm may represent a respondent while the grievance committee member is serving on the committee if:

(A) the representation involves a grievance committee other than the one on which the member of the law firm serves; and

(B) the grievance committee member has no involvement with the representation and is screened from access to the file on the matter.

(6) *Former Grievance Committee Members and Members of Former Grievance Committee Members' Law Firms.* Former grievance committee members and members of their law firms may represent a respondent in a disciplinary matter during the 1-year

disqualification period if the matter was not pending before the committee on which the former grievance committee member served during the former member's term.

(7) *Bar Staff.* No current bar staff member may represent a respondent in a disciplinary matter.

(8) *Former Bar Staff.* Former bar staff may represent a respondent in a disciplinary matter during the 1-year disqualification period if the disciplinary matter was not within the bar's disciplinary system as of the date that the former staff terminated employment with the bar.

**(b) Hiring Lawyers to Represent the Bar.** When the bar hires counsel, the executive director will evaluate the potential and actual conflicts on a case-by-case basis. The executive director determines if the conflict exists and should be waived. Waivers must be in writing.

**(c) Effect of Waiver.** If a waiver is granted under this policy, any affected board member is recused from participation in the matter, must be screened from law firm participation in the representation and must not have access to the law firm's file on the matter.

**(d) Procedures for Issuing Waivers.**

(1) *Request.* A person seeking waiver under this policy must file a written request with the executive director identifying the disciplinary case, the reason the waiver is necessary, and any other information helpful to the executive director, board or executive committee.

(2) *Executive Director Authority.* The executive director has the authority to issue waivers and may not deviate from this policy. The executive director will report to the board action on all waiver requests. Any board member may request review of a decision of the executive director.

(3) *Board Review.* The executive director may refer a request for waiver to the board for resolution. If the matter is presented to the board, the waiver request will first be reviewed by the disciplinary review committee, which will make a recommendation to the board. The board will determine whether the waiver should be granted.

(4) *Notice.* Notice of the board or executive committee action will be given to the interested parties.

(5) *No Right to Appeal.* The lawyer requesting the waiver has no right to appeal the decision of the executive director or the board.

## 15.20 RECUSAL OF BOARD MEMBERS IN DISCIPLINARY MATTERS

**(a) Grounds for Recusal.** Board members must follow recusal policies set forth in standing board policy 1.80.

**(b) Recusal Because of Pending Disciplinary Matters.** When minor misconduct or probable cause is found against a board member, that board member may not participate in any grievance proceedings as a board member until that matter is concluded.

## 15.30 EXECUTIVE COMMITTEE ACTIONS ON DISCIPLINARY MATTERS

**(a) Disciplinary Cases.** The executive committee may act in the board's place when staff counsel determines that a disciplinary matter cannot or should not be delayed for presentation to the board. No board or executive committee action is required in cases where the referee has approved a consent judgment or the bar has stipulated to reinstatement. Staff counsel will consider any designated reviewer recommendations.

**(b) Report to Board.** Executive committee actions relating to disciplinary matters will be reported to the board at the next regularly scheduled board meeting.

## 15.40 GRIEVANCE COMMITTEE MEMBERSHIP

At least 1 new member per year will be appointed to each circuit grievance committee to ensure that the majority of the committee has experience with the disciplinary system while encouraging the unique perspectives of new members. For committees consisting of 6 or more members, at least 2 new members per year will be appointed.

Each member of a grievance committee is appointed by the board on nomination by the board member assigned to review that grievance committee's actions. Members nominated between board meetings may serve on nomination and execution of the required oath and will continue to serve unless the board denies appointment.

Board members may not serve as members of a grievance committee. A family member of a board member or a member of a board member's law firm may serve on a grievance committee if the board member is not assigned to review the actions of that grievance committee.

## 15.41 EXPENSES OF COMMITTEE MEMBERS

Members of grievance committees may be reimbursed for reasonable out-of-pocket expenses incurred in connection with disciplinary investigations.

The nonlawyer members of the Statewide Advertising Grievance Committee may be reimbursed for reasonable travel expenses (including economy class air fare, ground transportation, tolls, and parking) and meals associated with attendance at committee meetings consistent with limits governing bar staff travel as set by the budget committee each fiscal year except that working lunches will be reimbursed at cost. Nonlawyer committee members must submit requests for expense reimbursement and receipts to the appropriate bar staff liaison within 30 days of travel.

## 15.42 GUIDELINES FOR GRIEVANCE COMMITTEE HEARINGS

**(a) Discretion of Grievance Committee Chair and the Grievance Committee.** The grievance committee chair has discretion to decide whether to hold a hearing or to conduct a

review of the record. A majority of the grievance committee may concur with or overrule the decision of the chair.

**(b) Notice to Respondent; Reply.** The bar's written notice to the respondent of the grievance committee's review of a disciplinary matter must advise the respondent that the:

(1) respondent has no right to a hearing before the committee;

(2) respondent may request a hearing;

(3) respondent may request to appear before the grievance committee;

(4) respondent's request must include a detailed explanation of the need for a hearing; and

(5) respondent's request must include a summary of the information to be presented at a hearing.

**(c) Notice to Complainant; Reply.** A copy of the respondent's request for hearing will be provided to the complainant who will be given a reasonable opportunity to reply.

**(d) No Right to Appeal.** Neither the complainant nor the respondent has a right to appeal a decision on whether a hearing is held.

**(f) Guidelines on Hearings.** The grievance committee should set a hearing at which witnesses are present only when doing so may assist the committee in resolving the issues. Examples of when a hearing may assist the grievance committee are cases in which:

(1) there is a conflict in testimony;

(2) the veracity of a particular witness (including the respondent) must be judged;

(3) the issues are complex and the facts may be developed best by an examination of witnesses; and

(4) there are issues of repetitive or cumulative misconduct.

## 15.45 BANKRUPTCY PROCEEDINGS

**(a) Generally.** Staff will determine if the bar member or former bar member has unpaid disciplinary costs when the bar becomes aware that a member or former member of the bar has filed bankruptcy proceedings. If there are unpaid costs, the bar should obtain counsel to protect its interests, consistent with the provisions of this policy. The bar will obtain pro bono representation when possible, but will pay attorney's fees in appropriate cases.

**(b) Florida Bankruptcy Cases.**

(1) *Procedures.* The bar will object to or otherwise contest discharge of outstanding disciplinary costs in all bankruptcy cases filed in Florida by bar members or former bar

members. Staff may obtain representation for the purpose of filing a proof of claim and protecting the bar's interests.

(2) *Chapter 7 Proceedings.* Staff may direct counsel to pursue filing a complaint to determine whether the bar's judgment may be discharged or to arrange terms for repayment of the debt.

(3) *Chapter 13 Proceedings.* Staff may direct counsel to ensure the bar's judgment is included in the scheduled plan for repayment of debts or to arrange terms for the repayment of the debt.

**(c) Out of State Bankruptcies.**

(1) *Procedures.* Bar staff will review all bankruptcy cases filed by out-of-state bar members or out-of-state former bar members to determine if disciplinary costs are outstanding. If disciplinary costs are outstanding, staff will determine if assets exist and evaluate the likelihood that the bar will collect the debt if it is preserved.

(2) *Obligations of $5,000 or Less.* A proof of claim may be filed in bankruptcies involving outstanding costs of $5,000 or less if staff determines there is a substantial likelihood that the debt may be satisfied. No further action may be taken in bankruptcies involving these amounts unless directed by the disciplinary review committee.

(3) *Obligations of More Than $5,000.* A proof of claim may be filed in bankruptcies involving outstanding costs of more than $5,000 if staff determines there is a substantial likelihood that the debt may be satisfied. Staff will recommend to the disciplinary review committee whether further action should be taken and, if so, whether paid counsel should be hired. The disciplinary review committee will direct any further action.

Action of the disciplinary review committee will be reported to the board at the next regularly scheduled board meeting.

**(d) Authority of Retained Counsel.** Counsel retained pursuant to this policy are authorized to take all necessary and reasonable action to preserve the bar's ability to collect the debt owed. The bar must approve all settlements.

**(e) Reimbursement of Expenses.** The bar may reimburse the expenses that counsel incurs in the representation of the bar's interest.

## 15.50 ADMINISTRATION OF ADMONISHMENTS

The Rules Regulating The Florida Bar authorize administering admonishments before the grievance committee, a referee, Supreme Court of Florida or the board. The bar generally requests that all admonishments be administered before the grievance committee.

The board authorizes administration of admonishments before the board if the designated reviewer for that grievance committee approves. Bar counsel will draft the admonishment, file it

as a memorandum of administration of the admonishment and provide a copy of the prepared admonishment to the respondent.

## 15.55 DEFERRAL OF DISCIPLINARY INVESTIGATION DURING CIVIL, CRIMINAL AND ADMINISTRATIVE PROCEEDINGS

**(a) Generally.** The authority of the board to defer or suspend grievance committee investigations is provided in rule 3-7.4, Rules Regulating The Florida Bar. This policy defines instances when deferral or suspension of disciplinary proceedings under rule 3-7.4, Rules Regulating The Florida Bar, is appropriate.

**(b) Deferral Generally.** Bar counsel or intake counsel analyzes all inquiries and complaints to determine if the issues raised may be addressed by the court or administrative tribunal in the underlying case. If so, bar counsel, with the concurrence of the chief branch discipline counsel, or intake counsel, with the concurrence of the director of the ACAP/Intake Department, may defer investigation or prosecution of the disciplinary complaint until the underlying case is concluded.

**(c) Special Circumstances Required for Deferral of Misappropriation Cases.** A bar investigation should generally not be deferred where there is evidence that the respondent has misappropriated funds from a client or other third party by improperly taking funds from a trust account or other account of which the respondent is a fiduciary, such as an estate, trust or escrow account. In these cases, bar counsel should investigate and prosecute bar rule violations simultaneously with civil, criminal or administrative proceedings based on the same conduct, except where bar proceedings would substantially impede the orderly process of proceedings in other tribunals. Bar counsel, with the concurrence of the chief branch discipline counsel, or intake counsel, with the concurrence of the director of ACAP/Intake Department, may defer investigation or prosecution of a respondent for misappropriation of funds if bar counsel or intake counsel determines that proceeding with the bar prosecution would substantially impede the orderly process of ongoing proceedings in other tribunals.

**(d) Deferral Procedures.** Bar counsel or intake counsel must follow the following procedures in deferring any type of investigation or prosecution.

(1) Bar counsel or intake counsel must give the designated reviewer written notice that staff recommends deferral of investigation or prosecution that the reasons for the decision.

(2) The designated reviewer may object to the decision to defer the bar's investigation or prosecution. If the designated reviewer does not object in writing within 30 days of the date of the notice, the decision to defer the investigation or prosecution is deemed approved.

(3) If the designated reviewer timely objects to the decision to defer the bar's investigation or prosecution, the investigation or prosecution will not be deferred.

(4) If the decision is to defer the investigation or prosecution, bar counsel or intake counsel must give written notice to the respondent and the complainant that:

(A) the bar's investigation or prosecution will be deferred pending the outcome of the civil, criminal, or administrative prosecution of the respondent; and

(B) it is the responsibility of the complainant to advise the bar that the issue was not addressed by the presiding court or other tribunal or that there was a finding by the court or tribunal of unethical conduct.

## 15.56 CASE PROCESSING GOALS

Case processing goals were adopted to expeditiously process disciplinary matters. These time frames are aspirational only and do not create or defeat any substantive rights. These goals are used solely as administrative tools for measuring performance of the disciplinary process.

**(a) Staff Investigations.** Absent unusual circumstances, staff-level investigations should be concluded within 90 days from the date a disciplinary file is opened.

**(b) Grievance Committee Investigations.** Absent unusual circumstances, grievance committee investigations should be concluded within 120 days from the date a disciplinary file is referred to a grievance committee.

**(c) Filing Formal Complaints.** Absent unusual circumstances, a formal complaint should be filed with the Supreme Court of Florida within 45 days from the date on which probable cause is found or otherwise established by rule.

## 15.60 EMERGENCY SUSPENSIONS

Chief branch discipline counsel must immediately notify staff counsel and initiate an investigation when the bar has information that indicates a misappropriation of trust funds. If a misappropriation is established, staff counsel and chief branch disciplinary counsel will determine if the filing of a petition for emergency suspension is warranted under the facts and, if so, branch staff counsel will immediately take the steps necessary to file the petition.

The bar will file a petition for emergency suspension in every case where there is a misappropriation of trust funds, unless there are facts known that clearly establish that the respondent will not cause great public harm if emergency action is not taken. Any decision not to file a petition for emergency suspension must be in writing, approved by the board, and placed in the respondent's file.

Any dispute over the appropriateness of the filing of a petition for emergency suspension must be resolved in favor of filing the petition, unless the designated reviewer directs that the dispute be referred to the board.

## 15.65 POLICY FOR AUDITS AFTER DISBARMENT AND DISCIPLINARY REVOCATION

The bar may seek to audit any trust, business, and personal accounts of all members who have been disbarred or whose membership has been revoked and who are alleged to have committed theft but have not been subject to an audit as part of their disciplinary proceedings. The bar will

seek the execution of an affidavit by these members attesting to their current professional and personal financial status and their current physical address. Audit and execution of the affidavit may be by consent of these members or by court order. Execution of the affidavit will be sought regardless of whether disbarment was by consent or contested.

Audits allow the bar to identify the full extent of the respondent's trust obligations and sources of available funds to satisfy the respondent's trust obligations.

## 15.70 DISCIPLINARY ACTION ON MALPRACTICE/INCOMPETENCE

The bar will not seek disciplinary action against a lawyer's isolated instance of malpractice based on incompetent representation unless the lawyer:

**(a)** has also committed other violations of the Rules Regulating The Florida Bar;

**(b)** is engaged in a pattern of incompetent representation; or

**(c)** has received a prior disciplinary sanction for incompetent representation.

## 15.75 REVIEW OF CLOSED INQUIRIES AND DISCIPLINARY COMPLAINTS

**(a) General.** This policy codifies procedures when a complaining witness or other interested person requests review of a closed inquiry or disciplinary case. It is not a formal, appellate process and should not be formal in content or rigid in its requirements. This review does not determine the underlying issues within an inquiry or disciplinary case but merely determines if an investigation will be reopened. The closure of the inquiry or case remains in effect while the matter is under review. At each level of review, bar counsel will inform the complaining witness and respondent or respondent's counsel of actions taken or decisions made.

**(b) Bar Counsel.**

(1) *Inquiry.* After review of the inquiry, bar counsel may:

(A) decide not to pursue the inquiry because there was no rule violation that justifies discipline or the bar has no jurisdiction; or

(B) decide to pursue the inquiry and open a disciplinary case.

(2) *Disciplinary Case.* After investigation and based on the facts, bar counsel may:

(A) dismiss a disciplinary case because there was no rule violation that justifies discipline or there is insufficient evidence to prove a rule violation;

(B) issue a no probable cause finding with a letter of advice with the concurrence of the grievance committee chair and notice to the designated reviewer;

(C) offer a diversion with concurrence of the grievance committee chair, staff counsel and the designated reviewer; or

(D) refer the matter to the grievance committee.

(3) *Bar Staff Authority*. Bar staff has no authority to overturn or appeal the actions of a grievance committee. Staff may only recommend to the designated reviewer that the grievance committee's actions be reviewed.

**(c) Chief Branch Discipline Counsel or Intake Director Review.** At the request of the complainant, the chief branch discipline counsel or ACAP/Intake Department director will review bar counsel's decision to close an inquiry or discipline case at staff level. The chief branch discipline counsel or ACAP/Intake Department director may:

(1) agree with the closure;

(2) reopen the matter for further investigation; or

(3) forward the matter to the grievance committee for further action.

**(d) Grievance Committee Chair Review.** At the request of the complainant, the chair of the grievance committee to which the file has been assigned will review the chief branch discipline counsel or ACAP/Intake Department director decision. The chair of the committee may:

(1) agree with the closure; or

(2) schedule the matter for consideration by the grievance committee.

**(e) Grievance Committee Review.** The grievance committee may terminate an investigation by finding that no probable cause exists that the respondent violated applicable rules, or that some cause exists that the respondent violated applicable rules but further disciplinary proceedings are not justified. The grievance committee may:

(1) agree with the closure; or

(2) reopen the matter for further investigation by the grievance committee.

**(f) Designated Reviewer.** At the request of the complainant, the designated reviewer will review all final actions of the grievance committee. The designated reviewer may:

(1) agree with the closure;

(2) refer the matter to the grievance committee for reconsideration; or

(3) refer the matter to the disciplinary review committee.

If bar counsel does not receive the designated reviewer's written decision within 30 days of notice of the grievance committee closure, the discipline case will remain closed.

**(g) Disciplinary Review Committee.** If the designated reviewer refers a matter to the disciplinary review committee, the disciplinary review committee will review the actions of the

grievance committee. The disciplinary review committee will make a recommendation to the board and may:

(1) agree with closure;

(2) request the case be reopened for further consideration by the grievance committee; or

(3) recommend any other action authorized under subchapter 3-7, Rules Regulating The Florida Bar.

**(h) Board Review.** The board may review the recommendation of the disciplinary review committee and decide whether to reopen an inquiry or case. A decision of the board agreeing with closure precludes further action on the case.

## 15.76 REVIEW OF GRIEVANCE COMMITTEE ACTION BY DESIGNATED REVIEWERS

**(a) Guidelines for the Designated Reviewer.**

(1) The action of the grievance committee should be given due deference.

(2) The role of the designated reviewer is to evaluate the propriety of grievance committee action and not act as an adjudicator. The designated reviewer's review is not limited to the grievance committee's record or bar counsel's file. The designated reviewer has broad discretion to review any material necessary to properly evaluate the action of the grievance committee.

(3) The designated reviewer may consider the number of members of the grievance committee voting on the matter and whether the vote was unanimous, a substantial majority or a simple majority.

(4) The designated reviewer may discuss the grievance committee's deliberations and actions with bar counsel, the committee's chair, and/or investigating member.

(5) The designated reviewer should remand the matter to the grievance committee if the designated reviewer believes further investigation is necessary or that action other than the grievance committee's finding should be taken in the case. Remand is preferred rather than referral to the disciplinary review committee.

(6) When a designated reviewer recommends that the matter be referred to the disciplinary review committee, the designated reviewer must provide reasons for that recommendation.

(7) Failure to note any item or issue in these guidelines does not preclude its consideration by the designated reviewer.

**(b) Material Available on Review.** Bar counsel will provide a copy of the letter or report of the grievance committee's action to the designated reviewer. The designated reviewer may request a copy of the bar counsel's file, which includes the record before the grievance committee.

## 15.77 ACCESS TO DESIGNATED REVIEWER IN DISCIPLINE CASES

The board is the bar's governing body and is bar counsel's client. The designated reviewer is a member of the board responsible for review of a particular grievance committee or matter, is an elected representative of constituent members of the bar, has representative responsibilities, and has the responsibility to protect the public interest.

A designated reviewer may, but is not required to, discuss disciplinary cases with persons other than board members, bar counsel, or other bar staff. Designated reviewers must exercise sound discretion while discussing a disciplinary case with persons other than board members, bar counsel, or other bar staff. Designated reviewers should report these communications to bar counsel so that bar counsel may be better informed and provide more competent representation.

## 15.80 SOLICITATION OF INFORMATION CONCERNING REINSTATEMENTS

**(a) General Policy.** The bar solicits input from the public, local bar groups, complainants and witnesses in prior disciplinary proceedings, and other interested persons when a bar member seeks reinstatement to the practice of law.

**(b) Publication in Media.** Bar counsel will publish notice of the filing of a petition for reinstatement in the bar *News* and in local newspapers of general circulation in the city or county of the petitioner's record bar address. The notice must sufficiently describe the nature of the conduct that gave rise to the discipline and the type of discipline imposed so that informed comments may be made.

**(c) Providing Information to Local Officials and Interested Persons.** Bar counsel will provide a full copy of the petition for reinstatement and a copy of documents from the prior disciplinary file that sufficiently describe the nature of the conduct leading to the discipline to the:

(1) local board member(s);

(2) chair of each local grievance committee;

(3) president of each known local bar group; and

(4) complainant(s) and other interested witness(es) from the prior disciplinary case(s) (if current addresses are known).

**(d) Responses.** The notices under this policy must state the name and address of bar counsel handling the reinstatement proceedings and a time during which interested persons may comment on the fitness of the petitioner to resume the practice of law in Florida.

## 15.90 REVIEW AND APPROVAL OF DISCIPLINARY COST, DIVERSION FEE, RESTITUTION, AND FEE ARBITRATION AWARD PAYMENT PLANS

**(a) Delinquent Payments Due to the Bar.** The following are delinquencies in payments due to the bar:

(1) *Costs.* Disciplinary costs and diversion costs that are not paid within 30 days after an order of discipline or report of minor misconduct becomes final are delinquent under rule 1-3.6(c); and

(2) *Fees for Diversion.* Fees for diversion that are not paid more than 30 days after the diversion recommendation becomes final are delinquent under rule 1-3.6(e).

**(b) Delinquent Payments Due to Clients or Third Parties.** Lawyers may be ordered by courts or arbitration panels to pay restitution or arbitration awards to clients or third parties. A fee arbitration award not paid within 30 days after the award becomes final and restitution not paid within 30 days after the court's order requiring restitution becomes final are delinquencies in payments due to clients or third parties.

**(c) Effect of Delinquency.** Delinquent members may not practice law under rule 1-3.6.

**(d) Authority of Board.** The board may extend the time for payment of the items in subdivision (a), for good cause shown under rule 1-3.6(c)(f).

**(e) Staff Authorization for Payment of Costs within 1 Year.** The board authorizes staff counsel to review and approve any proposed payment plan with a duration of 1 year or less. Staff counsel's decision to approve a payment plan of 1 year or less is not subject to board review.

**(f) Payment Plans Longer Than 1 Year.** Any request for approval of a plan that requires more than 1 year to complete payment of the obligation and any interest must be reviewed by the disciplinary review committee subject to final board approval.

**(g) Procedures.** All requests for approval of payment plans must be made in writing on forms created by the bar. These forms must include a petition for approval of the payment plan; a payment agreement outlining the specific plan for payment; a sworn affidavit of the financial status of the petitioner and petitioner's household; and an agreement that if a default occurs, the outstanding balance of the obligation and any interest is deemed delinquent for purposes of rule 1-3.6. The first payment of any proposed plan must accompany the petition.

**(h) Guidelines for Approval.** Staff and the disciplinary review committee have discretion when reviewing proposed payment plans and using the following guidelines:

(1) *Obligations of $1,000 or Less.* Cost balances of $1,000 or less should be paid in a lump sum due to the cost to the bar of administering payment plans.

(2) *Good Faith Effort by Respondent and Financial Hardship.* Review of any payment plan includes evaluation of whether the respondent has made a good faith effort

toward payment from the time the obligation becomes final to the time a plan was submitted and whether denial of a payment plan would work a substantial financial hardship on the respondent and/or those dependent on respondent.

(3) *Default.* A default occurs when a respondent is more than 30 days in arrears in payments, or has been more than 5 working days late in making 4 or more payments under the plan.

(4) *Successive Requests.* Absent unusual and extenuating circumstances, a respondent who defaults on a payment plan will not be granted a successive plan.

**(i) Review of Denials.** The respondent may request review of staff's denial of a payment plan by the disciplinary review committee. The disciplinary review committee may deny the plan, approve the plan, or propose a counter-plan. The disciplinary review committee's action on review of staff's denial of a payment plan is not subject to board review.

Actions of the bar are subject to the scrutiny of the Supreme Court of Florida.

## 15.91 JUDICIAL REFERRALS AND COMPLAINTS

When judges refer disciplinary matters to the bar, the bar will send an acknowledgement of receipt of the information to the judicial officer and keep the judicial officer informed on the progress of the case. Specifically, the judicial officer should be:

**(a)** informed when bar counsel is assigned;

**(b)** given a copy of the respondent's replies to bar counsel's inquiries;

**(c)** informed if the matter is closed by staff and the reasons the file was closed;

**(d)** informed if the case is assigned to a grievance committee and provided with the name of the investigating member;

**(e)** given a copy of the respondent's replies to inquiries from the grievance committee;

**(f)** given notice of any grievance committee hearing or review;

**(g)** informed if the matter is closed by the grievance committee and the reasons the file was closed;

**(h)** informed as to other action disposing of the matter by the grievance committee;

**(i)** given a copy of all pleadings filed at the referee level;

**(j)** given a copy of the referee's report;

**(k)** advised as to what action, if any, will be taken by the bar on appeal; and

**(*l*)** given a copy of the order or opinion of the Supreme Court of Florida concluding the matter.

## 15.92 ADMINISTRATION OF PUBLIC REPRIMANDS

**(a) Authority.** The Rules Regulating The Florida Bar allow administration of public reprimands by personal appearance before the board where necessary, in addition to publication in the Southern Reporter.

**(b) Administration by Personal Appearance before the Board in Special Circumstances.**

(1) *General Policy.* Notice of all public reprimands ordered by the Supreme Court of Florida is published in the bar *News* and on the bar's website.

(2) *Personal Appearances before the Board.* A respondent's personal appearance before the board to receive a public reprimand is appropriate in some circumstances.

**(c) Guidelines for Bar Counsel and Designated Reviewers.** Bar counsel will request referees to recommend and the Supreme Court of Florida to order the administration of all public reprimands by public written order of the court, published in the Southern Reporter, unless personal appearance before the board is appropriate.

**(d) Consultation and Factors to Be Considered When Recommending Personal Appearance for a Public Reprimand.** Bar counsel will consult with the chief branch discipline counsel and staff counsel to determine the recommendation of bar staff. The designated reviewer, with input from staff counsel, then determines whether to recommend administration of the public reprimand before the board. The following factors and any other relevant facts will be considered:

(1) the severity of the misconduct, particularly whether the misconduct involved significant harm to members of the public or the judicial system, and whether any harm to the public or to the administration of justice by the respondent remains unresolved;

(2) the disciplinary history of the respondent, particularly a pattern of the same type of harmful misconduct;

(3) whether the respondent shows remorse and has tried to rectify the harm inflicted by the respondent's actions;

(4) the health and any other extenuating circumstances of the respondent; and

(5) the geographical location of the respondent, including an analysis of where the misconduct occurred (within Florida or elsewhere).

**(e) Timing of Appearances for Public Reprimands before the Board.** When a public reprimand before the board is ordered by the Supreme Court of Florida, the public reprimand is scheduled at 1 of the next 3 board meetings that follow the date on which the order imposing the public reprimand becomes final.

**(f) Notice and Scheduling; Discretion.**

(1) *Notice.* When an order is entered imposing an appearance before the board, staff counsel will give notice to the respondent or respondent's counsel and the complainant or complainant's counsel of the dates and locations of the next 3 board meetings. Notice includes instructions that:

(A) the administration is scheduled for the first meeting on the list, then the second and then the third;

(B) the respondent must confirm intent to appear at a meeting;

(C) unconfirmed appearances will not be allowed; and

(D) the respondent is not required to appear at a meeting that is out-of-state or, in the opinion of staff counsel, too difficult to reach and will not be counted as 1 of the next 3 board meetings;

(E) the bar has the discretion to not schedule reprimands or limit the number of reprimands at a meeting of the board; and

(F) failure to appear as required under the rule and this policy, without good cause (as determined by staff counsel), may result in a proceeding for contempt and further disciplinary sanctions.

(2) *Scheduling.* Staff counsel will schedule administration of the reprimand at the first board meeting that follows the date on which the order imposing the public reprimand becomes final. If the reprimand is not administered at the first board meeting, administration will be scheduled for the second board meeting. If the reprimand is not administered at the second board meeting, the respondent will be scheduled for administration of the reprimand at the third board meeting.

(3) *Discretion to Schedule.* When scheduling an appearance for administration of a public reprimand, staff counsel has discretion not to require an appearance at a board meeting that is too difficult to reasonably require attendance and may limit the number of reprimands to be administered any board meeting because of other time commitments.

**(h) Action on Failure to Appear.** If the respondent does not appear at any of these meetings, staff counsel will determine if good cause for the non-appearance exists and, if none is found, will seek an order of the court imposing a judgment of contempt and imposing further disciplinary sanctions.

## 1600 UNLICENSED PRACTICE OF LAW

### 16.10 UNLICENSED PRACTICE; EXECUTIVE COMMITTEE AUTHORITY

Pursuant to the Rules Regulating The Florida Bar, the executive committee may take any action related to unlicensed practice of law (UPL) matters that the board may take, if staff counsel determines that the action cannot or should not be delayed for presentation to the board. In making this determination, staff counsel will be guided by recommendations of the designated reviewer, if any.

### 16.20 UPL COMMITTEE MEMBERSHIP

Each member of a UPL committee is nominated by the board member assigned to review that UPL committee's actions.

Members of the UPL committees are appointed by the court on the board's advice in accordance with Rule Regulating The Florida Bar 10-3.1. Members nominated between board meetings may serve on approval of the court and execution of the required oath and continue to serve unless the board disagrees with the appointment.

Board members may not serve as a member of any UPL committee. A family member of a board member or a member of a board member's law firm may serve on a circuit UPL committee if the board member is not assigned to review the actions of that circuit UPL committee.

### 16.21 WAIVER OF CONFLICT AS LAWYER FOR RESPONDENTS

**(a) Conflict of Interest and Waiver.** Rule Regulating The Florida Bar 10-5.2 prohibits certain lawyers from representing a respondent in a UPL matter due to conflict. Conflicts of interest may be waived by the executive director or the board as set forth in this policy.

**(b) Members of a Current Board or UPL Committee Member's Firm.** The executive director or board may consent to representation of a respondent in a UPL matter by members of the firms of current board members, current UPL standing committee members, and current UPL circuit committee members. The representation must not involve a UPL committee for which the board member serves as designated reviewer or liaison, or on which the UPL committee member serves as a member. Consent will not be given unless:

(1) the respondent is an employee of the board or UPL committee member's law firm; or

(2) the representation of the respondent in the UPL matter predated the board or UPL committee member's initial date of service on the board or committee, or the date on which the board or UPL committee member and respondent's counsel became members of the same law firm and refusal to allow continued representation would work a substantial hardship on the respondent.

**(c) Former Board or UPL Committee Members and Members of a Former Board or UPL Committee Member's Firm.** The executive director or board may consent to representation of a respondent in a UPL matter by former board members, former UPL standing committee members, former UPL circuit committee members, and any member of their law firms during the 1-year disqualification period if:

(1) the former board or UPL committee member had no involvement in the UPL matter while serving on the board or UPL committee; and

(2) the matter was not pending as of the date the former board or UPL committee member's term expired.

**(d) Former Staff Attorneys.** The executive director or board may consent to representation of a respondent in a UPL matter by a former staff lawyer during the 1-year disqualification period if the UPL matter was not within the bar's UPL system as of the date that the former bar staff lawyer terminated employment with the bar.

**(e) Procedures for Issuing Waivers.**

(1) *Request.* A person seeking waiver under this policy must file a written request with the executive director identifying the UPL matter, the reason the waiver is necessary, the grounds for the waiver request, and any other information helpful to the executive director, board or executive committee.

(2) *Executive Director Authority.* The executive director may waive conflicts as permitted within this policy. The executive director will report action on all waiver requests to the board. Any board member may request review of a decision of the executive director.

(3) *Board Review.* The executive director may refer a waiver request to the board for resolution. If the matter is presented to the board, the waiver request will first be reviewed by the disciplinary review committee, which will make a recommendation to the board. The board will determine whether the waiver should be granted.

(4) *Waivers Outside of Policy.* If a lawyer is seeking a waiver for reasons other than those set forth in this policy, the request must be presented to the board for approval.

(5) *No Right to Appeal.* The lawyer requesting the waiver has no right to appeal the decision of the executive director or the board.

**(f) Effect of Waiver.** If a waiver is granted under this policy, any affected board member, UPL standing committee member, or UPL circuit committee member is recused from participation in the matter, must be screened from law firm participation in the representation, and must not have access to the law firm's file on the matter. Any lawyer who is granted a waiver under this policy must not advertise or suggest in any way that the status or service of the current or former board member, UPL standing committee member, UPL circuit committee member, or staff attorney can in any way influence the outcome of the representation.

## 16.22 EXPENSES OF UPL COMMITTEE MEMBERS

Members of UPL committees may be reimbursed reasonable out-of-pocket expenses incurred with UPL investigations. The nonlawyer members of the UPL standing committee may be reimbursed for reasonable travel expenses (including economy class air fare, ground transportation, tolls, and parking) and meals associated with attendance at UPL standing committee meetings consistent with limits governing bar staff travel as set by the budget committee each fiscal year except that working lunches will be reimbursed at cost. Nonlawyer UPL standing committee members must submit requests for expense reimbursement and receipts to the UPL department within 30 days of travel.

## 16.23 DUAL CIRCUIT UPL AND GRIEVANCE COMMITTEE MEMBERSHIP

A bar member will ordinarily not be appointed to simultaneous service on both grievance and UPL committees. Although dual membership should not be prohibited in every case, the board considers dual membership susceptible to criticism.

## 16.24 UNDERCOVER INVESTIGATIONS IN UPL CASES

Bar counsel may supervise another individual in an undercover investigation under the following circumstances and in the following progression:

**(a)** a local circuit UPL committee or the UPL standing committee must request that an undercover activity be conducted;

**(b)** the request will be forwarded to UPL counsel in Tallahassee who will review the request and determine whether an undercover activity should be conducted. If UPL counsel recommends approval of the undercover activity the recommendation is referred to the chair of the UPL standing committee for authorization;

**(c)** the request must be related to a pending investigation that was initiated by a complainant other than the bar and that shows public harm or the potential for public harm; and

**(d)** the undercover activity, if approved, will be conducted by a duly authorized bar staff investigator or contract investigator. Under no circumstances may bar counsel, UPL counsel, a local circuit committee member, or standing committee member engage in undercover activity.